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Note of debtor endorsed by third person for less sum than debt received by creditor in settlement of same, is a good accord and satisfaction. *Varney v. Conery*, 138.

ACTION. See ATTACHMENT, 6-8. CHAMPERTY. CONFLICT OF LAWS, 6, 7. CONTRACT, 15, 22. DEED, 1. DOWER. EQUITY, 14-16. EXECUTORS AND ADMINISTRATORS, 3, 4. FRAUD, 2. HUSBAND AND WIFE, 17-18. INSURANCE, 5, 6, 25, 30. LIMITATIONS, STATUTE OF, 6. MORTGAGE, 1. NEGLIGENCE, 6. SHIPPING, 3, 4. VENDOR AND VENDEE, 2.

1. Both at law and in equity a living person has no heirs, even if *non compos mentis* or otherwise incapable of managing his estate. *Sellman v. Sellman*, 69.

2. Children of grantor cannot maintain bill against grantor and his grantee, to set aside conveyance upon ground of fraud and undue influence. *Id.*

3. If party continues to occupy premises after being notified by owner that if he does so, he will be expected to pay rent, he becomes liable to owner for use and occupation. *Illinois Cent. Rd. v. Thompson*, 670.

4. Where one has paid to another money on a contract and subsequently there is rescission of same entitling former to recover part of money so paid, he may do so on count for money had and received. *Evans v. Givens*, 670.

5. Rule that person injured by a felony is not allowed to sue for damages until he has instituted criminal proceedings, only applies between parties injured and injuring. *Appleby v. Franklin*, 304, and note.

6. Under building contract containing clause that the work shall be done under direction and to satisfaction of particular person, to be testified by his certificate, no action accrues to contractor until he has certificate or is entitled to it. *Kirtland v. Moore*, 206.

7. An action of assumpsit cannot be sustained for use and occupation of real estate, unless relation of landlord and tenant exists under a contract express or implied; and a contract will not be implied when neither party expected payment of rent. *Clark v. Clark's Adm'r.*, 768, and note.

8. An executor, during settlement of an estate, allowed father of devisees to occupy lands bequeathed them, neither party expecting payment, they living with their father, but never having had possession or the right of possession: *Held*, that assumpsit would not lie against their father's estate for the use, and that nothing could be recovered, although the case was tried under a reference. *Id.*

9. Relation of parent and child tends rather to rebut than to raise implication of contract for rent. *Id.*

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ADVANCEMENT.

Acceptance by son of conveyance of land from father, in satisfaction of his share in father's estate, not only bars his own right to share in distribution of father's estate, real and personal, but also that of his children, in case he should die before his father. *Simpson v. Simpson*, 404.

AGENT. See **BAILMENT**, 1, 3. **BANK**, 8, 9, 12, 20, 22. **BILLS AND NOTES**, 3, 8. **CORPORATION**, 2. **CRIMINAL LAW**, 9. **INSURANCE**, 12, 27, 31-33. **LIMITATIONS, STATUTE OF**, 8. **MASTER AND SERVANT**, 10. **SALE**, 4. **SET-OFF**, 3. **USURY**, 1.

1. Agent who has authority to contract for sale of chattels, has authority to collect pay for them at the time or as part of same transaction, in absence of any prohibition known to purchaser. *Trainer v. Morison*, 538. See *infra* 9.

2. Knowledge of such prohibition may be inferred from circumstances of sale or from customs of trade known to parties. *Id.*

3. Persons dealing with agent have right to presume his agency general, and notice of limited authority must be brought to their knowledge before they are bound to regard it. *Id.*

4. Notice of limited authority of agent, in this case, printed at top bill accompanying goods and not seen by purchasers, is not so prominent as to hold them at fault in not observing it. *Id.*

5. In the absence of a showing to the contrary, it is presumed that an agent with general authority to sell, has authority to warrant, and that warranty is not an unusual incident to a sale by an agent for a dealer where the thing sold is not subject to the inspection of the purchaser. *Talmage v. Bierhouse*, 276.

6. Though the authority of the agent be restricted by instructions from his principal, the latter will be bound by a warranty attending a sale by the agent unless the purchaser knew of such restriction. *Id.*

7. In action by commission-merchant against manufacturer, to recover balance due for advances on manufactured goods, former will be allowed to charge for printing the goods, it appearing that this was necessary and done according to custom of trade. *Talcott v. Smith*, 795.

8. Rule that authority of agent to sell goods imports authority to receive proceeds of sale, is limited to cases where circumstances induce belief in purchaser that such authority exists. *Meyer v. Stone*, 539.

9. Agent to sell goods who has possession of them, and delivers them to purchaser, has authority to collect purchase price; but if merely employed to sell and without possession of goods, he has no authority to receive price, and payment to him will not discharge purchaser, unless there is known usage of trade to justify him in making it. *Id.*

10. A deaf mute who does not understand any matter of business, and can not be made to understand it, except it may be such as is of the most simple character, and who has no comprehension of business matters, obviously can not manage his own affairs and is incapable of selecting an agent to transact them. *In re Perrine, &c.*, 776, and note.

11. Contract to sell land purporting to belong to *feme covert*, was made by one who acted as her agent: *held*, that contract was not binding on *feme*, 1st, because of her coverture, and 2d, because agent's authority was not under seal. Such contract is not binding on agent, because its terms do not purport to bind him. *Boyd v. Turpin*, 341.

12. Son conveyed land to mother, a *feme covert*, to defraud his creditors, and afterwards contracted in her name and as her agent, to sell the land to *bona fide* purchaser. After portion of purchase-money had been paid, mother attempted to repudiate contract and recover possession: *Held*, by court of equity, that she must either surrender land to son or abide by his disposition of it. *Id.*

AMENDMENT. See **JUDGMENT**, 2.

1. Court cannot, except by consent, allow amendment which changes pleadings so as to make substantially a new action, but an amendment which only adds to original cause of action is not of this nature. *Ely v. Early*, 342.

2. In an action to recover land, court may allow amendment so as to set up mistake in a deed. *Id.*

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3. Where distinct cause of action is inserted in complaint by amendment, it is tantamount to bringing a new action, and statute of limitations runs to time when amendment is allowed. *Ely v. Early*, 342.

4. Court will only correct mistake in deed or other written instrument, upon clear, strong and convincing proof; mere preponderance of evidence is insufficient. *Id.*

5. In trial by jury of issues arising in equitable matters, rules of equity should be followed as far as possible. *Id.*

6. Issues of fact, as distinguished from questions of fact, in equitable as well as in legal actions, must be tried by jury; but this does not authorize finding of such issues on less evidence than chancellor would find them. *Id.*

ANNUITY. See WILL, 11.

ARBITRATION.

1. Court of equity will enjoin suit at law on award, and set same aside where one of the parties in interest made statement to arbitrator, in absence of adverse party, designed and having tendency to influence his decision, without its being shown that any harm resulted therefrom to other party. *Catlett v. Dougherty*, 405.

2. Party to an arbitration, who, by overt acts, attempts to improperly influence an arbitrator in his favor, will not be heard to say that he was impotent to accomplish what he sought and raise an issue thereon. *Id.*

ASSIGNMENT. See BANKRUPTCY, 2, 3; CONTRACT, 18; COVENANT, 1; DEED, 7, 8; EQUITY, 23; GIFT, 4; MORTGAGE, 29; PARTNERSHIP, 2; REMOVAL OF CAUSES, 1.

1. Reservation of reasonable fee for preparation of deed is a preference forbidden by insolvent act of Maryland. *Wolfsheimer v. Rivinus*, 343.

2. Order drawn by creditor on debtor, directing payment out of specified sum, presented but not accepted, is a good assignment in equity. *Kirtland v. Moore*, 206.

3. To make an oral assignment of a debt due on account valid, there must be a valuable consideration, and at least a symbolical delivery. *White v. Kilgore*, 138.

4. An order, draft, or bill, drawn for valuable consideration for the whole of a particular fund, is an equitable assignment of such fund to payee. *Lee v. Robinson*, 670.

5. Such assignment is valid against creditor subsequently garnishing, even if garnishee was not notified of assignment until after garnishment, provided he has time to disclose it by affidavit before judgment. *Id.*

6. A. had made contract to erect school house for city, and, becoming insolvent, in order to secure funds with which to complete his contract, assigned to C. \$600 of the sum to be due him when school house should be finished. *Held*, that assignment was not in fraud of insolvent law and could be enforced in equity. *James v. City*, 791.

7. In absence of forbidding statute, sole surviving partner of insolvent firm, who is himself insolvent, can make valid assignment of partnership assets for benefit of joint creditors, with preferences, his fraudulently omitting from schedule certain property and appropriating same to his own use, does not affect rights of assignee and of beneficiaries, they being ignorant of grantor's fraud. *Emerson v. Senter*, 472.

ASSUMPSIT. See ACTION, 7, 8.

ATTACHMENT. See ASSIGNMENT, 5. BANK, 14, 16, 18. BILLS AND NOTES, 15. EXEMPTION, 6, 7, 9. HUSBAND AND WIFE, 16. INSURANCE, 22. PARTNERSHIP, 1, 2. SALE, 9.

1. Claim for tort is not a "debt" within foreign attachment statute, even if suit has been brought and case stands for hearing in damages after a default. *Holcomb v. Winchester*, 70.

2. Stock in private corporation may be attached by service upon the corporation, which may itself be the attaching creditor. *Norton v. Norton*, 70.

3. Where, prior to service of such process, shareholder has pledged the cer-

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tificates with absolute power of sale and transfer upon default endorsed, attachment only reaches surplus, and court may, proper parties being before it, order sale of stock. *Norton v. Norton*, 70.

4. Such attachment has precedence over later one served upon pledgee, who has never exercised power of sale and transfer. *Id.*

5. Dividends made by corporation and remaining in its hands after attachment has been served, follow the stock. *Id.*

6. Where it is attempted to join in one attachment proceedings for debts due and for others not due, and allegations in affidavit as to debts not due are insufficient, they will not vitiate allegations or proceedings as to debts which are due, but will be treated as surplusage. *Eng. Co. v. Hall*, 670.

7. That attachment proceedings for debts due and those not due can be joined in same suit doubted, but not decided. *Id.*

8. Purpose of statutory provisions as to attachment for debt not due, in requiring affidavit that it is actually an existing debt or demand, is to exclude from such remedy contracts on which liability of defendant is still contingent. *Id.*

9. Is "improperly" sued out within meaning of statute when plaintiff has no meritorious cause of action of class in which statute authorizes this remedy, or having such cause, ground alleged in affidavit for its issue is untrue or not one of grounds enumerated which must exist before it can be obtained. *Steen v. Ross*, 735.

10. Mere irregularity in papers is not of itself ground for recovery on attachment bond for "improperly" suing out attachment. *Id.*

11. In action on bond for "improperly" suing out the attachment, declaration must state in what the impropriety consisted. *Id.*

12. General attachment of all a debtor's interest in real estate, in a town, does not hold land fraudulently conveyed by debtor by deed recorded before attachment and conveyed by his fraudulent grantee to innocent purchaser for value after attachment. *Bank v. Mead*, 405.

13. Against the latter and subsequent purchasers from him, such attachment is not constructive notice of a lien or of *lis pendens*. *Id.*

14. Third party, whose goods are seized under an attachment and sold under interlocutory decree, can, on dissolution of the attachment, sue the surety in the attachment bond for the true value of the goods less net proceeds of sale paid to him. *Straub v. Wooten*, 206.

15. Defendants, residing in Indiana, and owning stock in bank there, lodged certificate with blank power to sell, &c., with corporation in Connecticut as collateral for loan which its value considerably exceeded. Held, that their equitable interest could not be reached by foreign attachment in Connecticut. *Winslow v. Fletcher*, 734.

ATTORNEY. See **BILLS AND NOTES**, 25. **CORPORATION**, 24, 25. **EVIDENCE**, 14. **EXEMPTION**, 1. **INJUNCTION**, 2. **REMOVAL OF CAUSES**, 4.

1. Statements of client affording reasonable evidence of intent to commit a crime, are not privileged. *State v. Barrows*, 70.

2. Rule protecting privileged communications is one of public policy and not one of which only party making communication can claim the benefit. *Id.*

AUCTIONEER. See **BAILMENT**, 1-3.

AWARD. See **ARBITRATION**, 1.

BAILMENT. See **BANK**, 3, 4. **INNKEEPER**, 2. **SALE**, 4.

1. An auctioneer selling goods "as auctioneer," but without naming the person for whom he sells, is liable as if selling for himself, and if the title turns out defective, may be sued by the vendee, independently of implied warranty of title, in an action for money had and received, on the ground that the consideration has wholly failed. *Seemuller v. Fuchs*, and note, 250.

2. An auctioneer has all the liabilities of an ordinary agent. He is not, like a sheriff, a public officer. *Id.*

3. An auctioneer sold a piano at public auction, "as auctioneer," but without naming his principal. One with a superior title to the piano took it from

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the vendee, who sued the auctioneer to recover back the purchase-money. *Held*, that the auctioneer was liable. *Seemuller v. Fuchs*, 250.

4. Where, by a contract of hiring the owner of a team sends his own servant to drive, he is only responsible for the acts of such driver in the handling of the team, while being used in the stipulated employment; and where team is lost while being used in a way, or at a place, or for a purpose not contemplated in the contract, the hirer cannot escape liability to the owner by showing that the driver consented to such use, or that the driver's negligence contributed to the loss. *De Voin v. Michigan Lumber Co.*, and note, 234.

5. A. hired his team and driver to B. to haul logs, and by direction of C., B.'s foreman, the driver went to haul hay. Under guidance of C., in going to a haystack, he drove over the snow-covered ice on the river, which broke through and the horses were drowned: *Held*, that B. was liable to A. for the value of the horses. *Id.*

BANK. See CONTRACT, 18. CORPORATION, 20, 23.

1. Certifying check, is primarily liable thereon. *Bank v. Anglo-American Co.*, 735.

2. Taking certified check on another bank, as payment on account or for collection, can show check has availed nothing, when it has discharged its duty by an effort to collect check; but otherwise when it sends same directly to debtor bank for payment and debt is lost in consequence. *Id.*

3. Upon special deposit of money, bank is merely bailee and bound according to terms of deposit; but on general deposit, money becomes property of bank and depositors' claim is merely for like amount. *McLain v. Wallace*, 278.

4. General depositors of insolvent bank must be paid pro rata. *Id.*

5. Addition of word "clerk" to name of general depositor does not make deposit special or change liability of bank. *Id.*

6. Rule that trustee can follow trust property so long as it can be traced, has no application in action to recover money on general deposit. *Id.*

7. Depositor whose pass-book is written up from time to time, and checks paid returned, is bound to examine account within reasonable time and report to bank errors or omissions. *Bank v. Morgan*, 343.

8. Where altered checks have been paid, if bank's officers, by proper care and skill, could have detected the forgeries, it cannot receive a credit for amount of those checks, even if depositor omitted all examination of his account. *Id.*

9. The required examination can be made for depositor by competent clerk; but if agent who examines account committed the forgeries, principal must at least show reasonable diligence in supervising agent's conduct. *Id.*

10. Contract between cashier of bank and defendant, whereby defendant was to buy railroad stock for cashier with money of the bank to be advanced by cashier, for which defendant's note with said stock as collateral was to be given the bank, was contrary to rules of bank and amounted to misappropriation of its funds for which both cashier and defendant are liable. *Bank v. Hartridge*, 278.

11. The knowledge of cashier in such transaction was not the knowledge of bank. *Id.*

12. President of bank cannot make valid contract between it and third party for whom he also acts as agent in the transaction. *English v. Bank*, 278.

13. Where Coker, who was president of bank, and English agreed with bank in writing, to become guarantors for safe return of certain jewelry to bank by Sharpe, and by such return agreement was abrogated, it was not subsequently revived by note of English to Coker, authorizing him to make any arrangement with Sharpe, for Coker and English, by which Sharpe might take the goods, and an arrangement by which Sharpe was allowed by Coker to take the goods, giving a receipt to Coker and English therefor, and Coker bound himself verbally to the bank to be jointly responsible with English for their safe return. *Id.*

14. Where depositor drew check in favor of another before service of process on bank attaching depositor's funds, and same was paid by bank after service of writ and charged to account of depositor, *held*, that bank was entitled, as

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garnishee, to credit for check so paid. *Bank of America v. Indiana Banking Co.*, 277.

15. *Aliter*, had check been drawn after service of process on garnishee. *Id.*

16. Where depositor endorsed promissory note of third party and discounted same in bank where he had funds to his credit, *held*, that a payment of the amount due on such note by the endorser to the bank, out of his funds on deposit, after service of garnishee process on bank at suit of creditor of such endorser, could not be allowed bank as a set-off, the endorser's liability to the bank being contingent. *Id.*

17. If a depositor draws check on his banker, who has funds to cover it, it operates to transfer the sum named in check to payee, who may sue for and recover same in his own name. *Id.*

18. It is as lawful for an attachment debtor to draw his check in favor of the garnishee with whom his bank account is kept, as in favor of any one else, if done in good faith before the service of process, and the garnishee will be entitled to credit for the amount named in the check in the absence of fraud. *Id.*

19. A check drawn by a depositor in the state of Indiana, on his banker, payable in Illinois, will be construed by the laws of Illinois, and operate to transfer the sum named therein in accordance with such laws, notwithstanding a different rule obtains in the other state. *Id.*

20. In suit against firm of private bankers on note given by their cashier for money borrowed by him in firm name and appropriated to his own use, which turned on his authority to give the note, evidence of custom of bankers at that place to borrow money on time properly admitted as tending to show that act complained of was within scope of defendant's ordinary business. *Crain v. Bank*, 278.

21. In same suit it was *held*, a paper directed to distant bank giving signatures of persons authorized to sign for defendants, one of which was in handwriting of cashier, and another, that of one of defendants, was evidence of an admission by defendant so signing of cashier's authority to execute note in firm name. And the fact that payee of the note did not act on faith of such paper, though detracting from its weight, did not render it irrelevant and improper. *Id.*

22. The fact that cashier of private bank gave notes of other persons of his bank, amounting to over \$5000, as collateral, to secure note of that amount given by him in name of his principals, with usual power of sale, &c., not sufficient to affect party making the loan with notice of cashier's lack of authority to execute the note or of fraud in giving it. *Id.*

BANKRUPTCY.

1. New promise to pay debt discharged by bankruptcy is not an original contract but revives the old debt. *Nowland v. Lanagan*, 206.

2. Fact that assignee has not recovered property assigned or realized its money value, within time limited by bankrupt laws does not give bankrupt or his creditors right to recover property. *Mount v. Manhattan Co.*, 608.

3. Assignee not compelled to accept property which is onerous, and will yield nothing toward payment of debts. *Glenn v. Howard*, 735.

4. Discharge in bankruptcy no bar to action for subscription to stock of incorporated company called after discharge, though bankrupt was stockholder at time of bankruptcy. *Id.*

5. Where suit was commenced in state court, prior to filing by defendant of petition in bankruptcy, on a debt provable, but not proved, thereunder, and judgment was obtained thereon subsequent to granting of discharge to said bankrupt, *held*, in suit on said judgment in another state that discharge could not be pleaded as bar thereto. *Dimock v. Revere Copper Co.*, 405.

6. After sale of land by assignee has been confirmed and lands conveyed, U. S. Circuit Court has no jurisdiction at suit of purchaser to enjoin sale of same land upon order of state court upon judgments in suits commenced by attachment of the land a few days before defendant was adjudicated a bankrupt. *Sargent v. Helton*, 71.

BENEFICIAL SOCIETY. See **INSURANCE**, 17, 18, 24.

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BILLS AND NOTES. See **ACCORD**. **ASSIGNMENT**, 4, 5. **BANK**, 20, 22, **CONTRACT**, 17, 18. **FRAUDS**, **STATUTE OF**, 1. **GIFT**, 1. **LIMITATIONS**, **STATUTE OF**, 1, 2. **MORTGAGE**, 29.

I. Form, Consideration, &c.

1. Production of bill with alteration apparent upon its face makes *prima facie* case for acceptor alleging material and unauthorized alteration since acceptance. *Harris v. Bank*, 736.

2. Contracts for the purchase and sale of cotton "futures" are illegal, and evidences of debt executed on such consideration are void, even in hands of purchaser for value without notice. *Bank v. Cunningham*, 138.

3. Brokers cannot recover for services rendered in a gambling transaction. *Id.*

4. A promissory note reciting "we promise to pay," and signed "D. P. Livermore, Treas'r, Hallowell Gas-Light Co.," is the note of the individual and not of the corporation. *McClure v. Livermore*, 792.

5. An action on such a note against the corporation, and its default, will not estop owner from maintaining action against the individual, when it does not appear that acts of plaintiff caused defendant to change his position, or to take some action injurious to himself. *Id.*

6. Bill of exchange payable 60 days after sight, was accepted "due twenty-first May," but without date of acceptance. *Held*, that in absence of affirmative proof that days of grace had been included, they must be allowed. *Bell v. Bank*, 71.

7. Surrender of old promissory note is sufficient consideration for new one executed by surety, although surety had been released from payment old note by action of insolvent principal, where both parties knew substantial facts, but, being ignorant of law, in good faith supposed surety liable for old note. *Churchill v. Bradley*, 671.

8. Drawee of bill of exchange drawn by "Kanawha and Ohio Coal Co.," was described in bill as "John A. Robinson, Agt.," and it was accepted by him as "John A. Robinson, Agent, K. & O. C. Co." *Held*, that acceptance was personal obligation of Robinson, and that in suit by endorsee against him parol evidence was not admissible in absence of fraud, accident or mistake, to show that defendant so accepted the bill intending to bind drawer as his principal, and that this fact was known to plaintiff at time it became owner and holder of it. *Robinson v. Bank*, 736.

9. Acceptor of non-negotiable draft, may pay same to payee, after maturity, without production and delivery of draft, provided acceptor has had no notice of transfer of draft by payee to third person; and such payment would be a valid defence against the note, should suit be brought thereon against acceptor by another person. *Johnston v. Allen*, 540.

10. In event of such suit by another person, burden of proof would be on plaintiff to show that defendant had notice of transfer before payment was made. *Id.*

11. Where party under arrest for embezzlement, gives draft for amount embezzled to person from whom it was embezzled, such draft is not invalid, unless given in consideration that prosecution should be suppressed. *Id.*

12. Where non-negotiable draft, valid in its inception, was loaned by payee to person under arrest for embezzlement, to enable him to compromise with party who caused his arrest, and such draft is transferred to such party, who brings suit thereon against acceptor, it is no defence that the holder received it in consideration of suppressing prosecution of party to whom it was loaned by payee. *Id.*

II. Rights of Parties.

13. If fraud in procurement of note be shown, *onus* is upon plaintiff to show that he is *bona fide* holder for value and without notice. *Crampton v. Perkins*, 736.

14. Evidence of parol agreement, prior to or at time of drawing and deliv-

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ering bill of exchange, that drawer is not to be liable as such, is inadmissible. *Cummings v. Kent*, 207.

15. Draft for sum stated, drawn by seller against buyer in favor of a national bank, by whom it is discounted or purchased, with bill of lading attached, passes title to goods therein mentioned to bank; and bank may recover them on dishonor of draft, from sheriff who had seized goods as property of seller under attachment subsequent to purchase by bank. *Bank v. Rowan*, 405.

16. Draft so drawn is a bill of exchange, and its purchase by a national bank is not beyond powers conferred on it by Acts of Congress. *Id.*

17. Where holder promissory note gratuitously permits it to run after maturity and subsequently on payment of part agrees to wait until maker can collect money with which to discharge balance, such maker is not estopped to set up a defence then existing, or which might thereafter arise, of which neither such maker nor holder had notice at time of agreement. *Henry v. Giltland*, 279.

18. To defeat clear defence to note, not payable in bank, in hands of assignee, on ground of subsequent contract to pay in consideration of extension of time, extension must be for definite time on valid consideration. Performance of plaintiff's part not sufficient to bind maker. *Id.*

19. Although contract between the parties may have been embodied in a draft, with bills lading attached, drawn in favor of plaintiff below, if proof shows borrower gave it with intent to defraud lender, and lender became aware of fact, it had right to repudiate draft as void and sue on the account for money loaned, and to put in evidence draft, bills lading, letters of drawer to drawees, and sayings of drawer showing intent to defraud. *Massengill v. First Nat. Bank*, 539.

20. Declaration upon a conditional acceptance must allege a performance of the condition. *Myrick v. Merritt*, 539.

21. Allegation of delivery of house, and that acceptor has been in possession, not sufficient allegation of performance of condition that house has been "finished according to contract and delivered," upon which draft is payable. Allegation that plaintiff, the payee, gave acceptor notice that he held himself ready to complete the house according to contract or to pay her a reasonable sum for his failure if she would point out deficiencies or omissions, and that she refused to do so or to permit him to enter house for purpose of completing it according to contract, is not sufficient averment of performance of conditions named in acceptance, whether considered alone or in connection with above allegation of delivery to and possession by acceptor. *Id.*

22. If, in any case of non-performance by drawer of conditions named by acceptor in acceptance, the payee has a right of action against acceptor who refuses to permit him to perform conditions, such action is not on the acceptance, but in case for damages. *Id.*

III. Endorsement.

23. If endorsee, before maturity, knew or was put on inquiry as to equity of maker, he takes *cum onere*. *Hulbert v. Douglass*, 343.

24. Where negotiable note is secured by mortgage, fact that one-half of land has been released, is some evidence to charge purchaser with notice of partial payment. *Id.*

25. Notice to attorney of any matter relating to business of client in which he is engaged, is notice to client. *Id.*

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CASES AFFIRMED, COMMENTED ON, OVERRULED, ETC.

Burton v. Spiers, 87 N. C. 87; Duvall v. Rollins, 68 Id. 230; Crummen v. Bennett, Id. 494, cited and approved. *State v. Harper*, 347.

Cannon v. United States, 116 U. S. 55, judgment vacated and writ of error dismissed. *Snow v. United States*, 475.

Hoare v. Rennie, 5 H. & N. 19, approved. *Norrington v. Wright*, 21 Am. L. Reg. (N. S.) 395, affirmed. *Norrington v. Wright*, 47.

Hemenway v. Hemenway, 134 Mass. 446, distinguished. *Trust Co. v. Eaton*, 162.

Hernden v. Moore, 18 S. C. 339, distinguished. *Feldman v. Charleston*, 208.

Hough v. Railway Co., 100 U. S. 224, considered and applied. *Dist. Columbia v. McElligott*, 409.

Mersey Steel and Iron Co. v. Naylor, 9 App. Cas. 434, followed. *Blackburn v. Reilly*, 59.

Mitchell v. Darley Main Colliery Co., 24 Am. L. Reg. (N. S.) 432, and Brunsden v. Humphrey, Id. 269, criticized and distinguished. *City of North Vernon v. Voegler*, 101.

Patterson v. Wallace, 1 Macq. 748, and Hall v. Johnson, 3 H. & C. 589, compared. *Johnson v. Florence Co.*, 580.

Saxby v. Gloucester Wagon Co., 7 Q. B. Div. 305, referred to. *Gardner v. Herz*, 478.

Thomas v. Rd., 101 U. S. 91, reaffirmed. *Penn Co. v. St. Louis, &c., Rd.* 550.

United States v. Fisher, 109 U. S. 143, and United States v. Mitchell, Id. 146, distinguished. *United States v. Lungston*, 549.

Waters v. The People, 104 Ill. 544, distinguished. *Hoag v. People*, 738.

CHAMPERTY.

The fact that a suit is being prosecuted under a champertous agreement between plaintiff and his counsel is no defence to the suit. Such irregularity can only be set up where it is sought to enforce the champertous agreement. *Bent v. Priest*, 115, and note.

CHARITY. See CORPORATION, 14. PUBLIC POLICY, 2, 3. TRUST AND TRUSTEE, 2. WILL, 6, 7.

CHATTEL MORTGAGE. See MORTGAGE, II.

CHECK. See BANK, 1, 2, 7, 8, 14, 15, 17, 19.

CITIZENSHIP. See REMOVAL OF CAUSES. UNITED STATES COURTS, 1. CITIZENSHIP, 1.

CITY. See MUNICIPAL CORPORATION.

COMMON CARRIER. See CONSTITUTIONAL LAW, 12, 13. RAILROAD, 4, 6. TELEPHONE, 1.

1. A railroad company is not a common carrier of express companies, *i. e.*, a common carrier of common carriers. *Express Co. Cases*, 274. See *infra* 14.

2. A common carrier may, by contract, limit his liability as an insurer, but he cannot thus relieve himself from consequences of his negligence or fraud. *Rosenfield v. Ry. Co.*, 279.

3. Though common carrier may limit his liability by fixing value of goods, he must show this was done with knowledge of shipper, and for sufficient consideration, or that shipper's statements justified carrier in so fixing value. *Id.*

4. Burden is on carrier to show any limitation on his common law liability and contracts limiting amount of recovery are construed most strictly against him. *Id.*

5. In action against common carrier for loss of goods, where defence is that loss was occasioned by "act of God"—here extraordinary flood—burden of showing that negligence of carrier contributed with act of God to produce loss is on shipper. *Davis v. Rd. Co.*, 650, and note.

6. Defence of act of God may be shown under general denial. *Id.*

7. When goods are received by carrier to be transported beyond terminus of its line, and delivered at particular place and to particular persons, without

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more, he is responsible to consignor for their safe delivery. *Talvey v. Georgia Road*, 541.

8. To ascertain if any contract was made by first carrier to transport beyond its line, to place of destination, bill of affreightment may be looked to, and *aliunde* evidence introduced, such as payment of all freight, way bill, &c. *Id.*

9. Condition in free pass that railroad company shall not be liable for injury caused by negligence of its servants, is reasonable, and will prevent recovery, even though passenger was a minor, and injuries were caused by gross negligence of the railroad employees. *Griswold v. Railroad*, 196.

10. The plaintiff was employed by keeper of restaurant at railroad station, to sell sandwiches on train. While so employed he obtained the pass in question, to make a journey for his own pleasure. *Held*, that pass did not give plaintiff right of passenger for hire. *Id.*

11. Carriers of live stock are liable as common carriers and as insurers to same extent as carriers of merchandise, except as to injuries caused by animals to themselves or each other; losses caused by their inherent vices and propensities. *Railway Co. v. Lesser*, 541.

12. A common carrier cannot lawfully stipulate for exemption from responsibility for negligence of himself or servants, or insufficiency of cars for transportation of freight deposited in them. *Id.*

13. When shipper of live stock, in consideration of reduced rates, contracts with carrier, that in case of total loss of any of stock, the value of any animal should not exceed a certain sum, then in case of partial injury, the damages will be the proportion of that sum, the animal was lessened in value by reason of the injury. *Id.*

14. A railroad company performs its whole duty to the public at large, and to each individual when it affords the public all reasonable express accommodations; it owes no duty to the public as to particular agencies it shall select for that purpose, but may choose its own appropriate means of carriage, always provided they are such as to insure reasonable promptness and security. *Express Company Cases, Legal Notes*, 274.

15. Is not bound to establish commutation rates for particular locality, but having done so must treat all alike. *State v. Railroad Co.*, 444, and note.

16. Commuter one day forgot his ticket, and tendered to conductor regular trip ticket, provided it should not be punched, and should be returned next morning on presentation of commutation ticket, and otherwise refused to pay his fare: *Held*, that relator made himself liable to ejection from train, and it may be to forfeiture of commutation ticket then held, but that company were not justified in refusing to sell him commutation tickets thereafter; and that for such refusal, mandamus would lie. *Id.*

17. Discrimination by, generally. *Id.*, note.

18. Carrier by water may deliver goods on wharf, but generally consignee is entitled to notice of their arrival. Notice, however, may be waived by previous dealing between the parties. *Turner v. Huff*, 540.

19. Carrier by water is not responsible for loss of goods delivered at landing place where consignee receives his goods, though there be no warehouse there and consignees have no notice of their arrival, if it be the uniform usage of carriers in same trade to leave goods at landing place, without notice, and the manner of delivery conforms to the custom of the locality; and this, whether shipper or consignee knew of usage or not. *Id.*

20. Stipulation in bill of lading that carrier shall have benefit of any insurance on the goods is valid, and in such case, even though loss be occasioned by negligence of carrier, insurance company cannot be subrogated to rights of shipper. *Insurance Co. v. Transportation Co.*, 330.

21. Where goods were shipped under oral agreement, with understanding that bills of lading would be subsequently issued, and afterwards, and after effecting of insurance by shipper, bills of lading were issued, containing provision giving to carrier benefit of any insurance on goods, which bills were not objected to by shipper, and were similar to other bills previously issued to him, contract of carriage is to be treated as if made on day of oral agreement and insurance company is bound by conditions of bills of lading. *Id.*

CONDITIONAL SALE. See FIXTURES, 1. SALE, 8, 9, 11.

CONFLICT OF LAWS. See BANK, 19. CONTRACT, 23. CONSTITUTIONAL LAW, 42-44. CORPORATION, 13, 18. HUSBAND AND WIFE, 7, 9. INSOLVENCY.

1. Validity of gift *causa mortis* is to be determined by law of place where made, without reference to domicile of donor. *Emery v. Clough*, 473.

2. If no place is agreed on for performance of contract, *lex loci contractus* governs. *Morris v. Hockaday*, 472.

3. Where bond was dated in North Carolina, but had no specified place of payment, *held*, that it was governed by usury laws of that state, although pleadings admit its delivery in Virginia. But *contra*, if bond was given for goods purchased in Virginia. *Id.*

4. *Quære*, whether parties can agree on rate of interest, legal where contract is made, but illegal where it is to be performed. *Id.*

5. Personal property of deceased person is to be administered according to law of his domicile. The law of country of which he is a subject regulates the succession. This law applies to mortgages on land as well as to other personality. *Thomas v. Morrissell*, 541.

6. Issues passed on by probate court of another state cannot be opened by proceedings in our courts substantially between same parties and involving same issue; and there is nothing in the question of domicile to take it out of the general rule. *Id.*

7. Defendant's discharge under insolvency law of Massachusetts, is no bar to suit in New Hampshire, on contract made in former state before insolvency, when plaintiff has not resided there since insolvency proceedings were begun, and has not submitted to the jurisdiction of the insolvency court. *Norris v. Atkinson*, 792.

8. Complainant in New Jersey court claimed as residuary legatee, part of fund in defendants' hands, under what complainant claimed was a void bequest. *Held*, that as testator was a non-resident, and his will had never been proved nor recorded in New Jersey, complainant was not entitled to relief, although bill states that fund is under control of defendants, who reside in New Jersey, and are executors of surviving executor of will in question. *Van Gieson v. Banta*, 207.

9. In suit by stockholders of foreign corporation against it and corporation to which it had leased its road, lands, &c., all of which were out of New Jersey courts' jurisdiction, seeking relief in regard to transactions of these corporations with each other, that court, on demurrer, declined to take jurisdiction on ground that courts of New York were proper forum. *Gregory v. Railroad Co.*, 207.

CONSIDERATION. See COMMON CARRIER, 10. CONTRACT, 18, 22. FRAUDS, STATUTE OF, 2. INSURANCE, 23. PLEADING, 2.

CONSPIRACY. See INJUNCTION, 6.

CONSTITUTIONAL LAW. See CRIMINAL LAW, 6, 9, 11, 15, 16. ERRORS AND APPEALS, 2. HIGHWAYS, &c., 4, 5. LIMITATIONS, STATUTE OF, 13. MUNICIPAL CORPORATION, 14, 18. RAILROAD, 9. REMOVAL OF CAUSES, 2. SLANDER AND LIBEL, 7. STATUTE, 1. TELEGRAPH, 1. TELEPHONE, 2.

I. *Powers of Legislature.*

1. Statute authorizing executions against inhabitants upon judgments against towns is constitutional. *Eames v. Savage*, 71.

2. General Assembly under general grant of legislative power in constitution, has power to provide by reasonable and impartial statute for registration of voters. *Daggett v. Hudson*, 71.

3. Statute which authorizes seizure of intoxicating liquor, intended for unlawful use, in possession of express company, does not interfere with interstate commerce and is not in conflict with sect. 8, of Federal Constitution. *State v. O'Neil*, 671.

4. Provision in the 14th Amendment to Constitution United States, forbidding a state to deny to any person within its jurisdiction, equal protection of laws, applies to Southern and Central Pacific Railroad Companies. *Santa Clara Co. v. South. Pac. Rd.*, 541.

5. Law requiring liquor dealers to remove obstructions to clear view of pre-

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mises through window on Sunday is constitutional, though it does not define what constitutes an obstruction. *State v. Boyle*, 671.

6. Ordinance requiring street railroads to make quarterly reports of number of passengers, is not unreasonable or in restraint of trade, and is not in violation of art. 5 of Amendments to United States Constitution. *St. Louis v. St. Louis Rd.*, 609.

7. Where public officer has rendered services under law which fixes his compensation, a constitutional provision, passed afterwards, lowering limit of taxation, impairs obligation of contract by destroying remedy *pro tanto*. *Fisk v. Jury*, 208.

8. Grant to corporation by legislature of Louisiana of exclusive privilege supplying New Orleans with gas for certain period is binding on state, and it cannot, either by its organic law or legislative enactment, impair the obligation of the contract. *Gas Co. v. Light Co.*, 139.

9. A state, by a statute subjecting railroads to double damages for failure to maintain fences and cattle-guards, does not deprive the companies of their property without due process of law, or deny them the equal protection of its laws. *Railway v. Humes*, 71.

10. Authority for imposing such duties as prescribed by the statute in question is found in the police power of the state. *Id.*

11. Act state legislature imposing tax on persons who, not having their principal place of business within the state, engage in selling or soliciting sale of certain liquors to be shipped into state, is unconstitutional, as in effect a regulation of inter-state commerce. *Walling v. State Michigan*, 279.

12. Provisions Pub. Stat. R. I. cap. 139, forbidding discriminations by common carrier in his charges for transportation, apply to contracts made in that state for transportation to points beyond state. *Coal Co. v. Rd.*, 671.

13. These provisions so applying are not in conflict with Art. I., sect. 8 of Federal Constitution. *Id.*

14. When railroad is built by corporations located in and chartered by different states and these corporations consolidate, they make but one corporation, whose acts and neglects are done by it as a whole. *Id.*

15. Act conferring certain corporate powers on cities of first grade of first class is general, and is not in conflict with constitutional prohibition against passage of special acts conferring such powers. *State v. Hawkins*, 473.

16. Power conferred on governor of state to remove members of board of police commissioners, is administrative and not in conflict with clause of constitution conferring judicial power on the courts. *Id.*

17. Where charges embodying facts that in judgment of law constitute official misconduct, are preferred to governor, of which notice is given to members charged, and he, acting upon charges so made, removes them from office, his act cannot be reviewed, or held for naught on proceeding in *quo warranto*. *Id.*

18. Statute providing for appointment in city of board of four commissioners to take charge of elections, two members thereof to be selected from each of the two leading political parties of the city, such board to appoint registers, inspectors and clerks of election from each of the two leading political parties, is unconstitutional, as requiring an unlawful test for holding of public office. *Attorney-General v. Detroit*, 34, and note.

19. Party representation being main object of such law, court cannot treat it as not essential and sustain commission by allowing selection of its members without such test. *Id.*

20. Creation by statute of board of commissioners for city, having control of municipal elections and appointment of election officers, is unconstitutional, as being a delegation of governmental powers. *Id.*

21. Legislature has no power to levy taxes for private purposes, and bonds issued by city to be lent to applicants who will build up waste places and burnt districts of the city are not valid obligations. This case distinguished from cases sustaining local taxation in aid of railroads. *Feldman v. Charleston*, 208.

22. Statute forbidding and punishing sale of adulterated milk provided that, in all prosecutions, if the milk be shown, upon analysis, to contain more than 88 per cent. of watery fluids, or less than 12 per cent. of milk solids, or less

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than $2\frac{1}{2}$ per cent. of milk fats, it should be deemed adulterated, held constitutional. *State v. Groves*, 344.

23. Act establishing reform school in all counties in which is located city of over 50,000 inhabitants, violates provisions of constitution of Missouri against passage of local or special laws. Court takes judicial notice of census returns, and it is found that Jackson county is only county in state to which the law could apply, or was intended to apply. *State v. County Court*, 609.

24. Where journal of each house of general assembly shows that a law received concurrence of requisite number of members and was publicly signed by presiding officers as also required, its authenticity cannot be impeached by parol evidence that one or more members recorded as concurring and whose concurrence was necessary, had, prior to adoption of law, been seated upon determination of contested election, by less than constitutional quorum. *State v. Heron*, 737.

25. Sects. 5 and 6 of Art. 11 of Military Code of Illinois, prohibiting any body of men, other than organized militia of state and United States troops, from parading with arms in any city without a license from the governor, do not infringe right of people to bear arms, and clearly do not conflict with Second Amendment to Constitution of United States. *Presser v. Ill.*, 207.

26. The right to associate as a military company and parade with arms, not having been specially granted by congress or the state, is not an attribute of national citizenship protected by 14th Amendment to National Constitution. *Id.*

27. Requirement that each vessel passing a quarantine station shall pay fee fixed by statute for examination as to her sanitary condition and the ports from which she came, is a part of all quarantine systems, and is a compensation for services rendered vessel, not a tax within meaning of constitution concerning tonnage tax imposed by the states. *Steamship Co. v. Board of Health*, 542.

28. Nor is it liable to constitutional objection as giving a preference for port of one state over those of another. Sect. 9, art. 1st of Constitution is a restraint on powers of general government and has no application to quarantine laws of Louisiana. *Id.*

29. Where state constitution provides that every white male citizen who shall have resided in state for certain period preceding election, shall have right to vote, any law which requires previous registry of citizen as prerequisite to right to vote is unconstitutional and void. Such a law is not rule of procedure, but legislative condition attempted to be attached to exercise of constitutional right. *White v. County Judge*, 636, and note.

30. Act of legislature directed that all property of railroad and canal companies used for railroad or canal purposes, including their franchises, should be assessed for taxation in manner which differed materially both in ascertaining values and in rate of tax from assessment of similar property not used for such purposes. *Held*, that act did not contravene requirement of state constitution that "property shall be assessed for taxes under general laws and by uniform rules according to its true value." *Board of Assessors v. State*, *Legal Notes*, 666.

31. The words "due process of law," in the constitutional provision, "that no person shall be deprived of life, liberty or property, without due process of law," means general public law binding on all members of the community, under all circumstances, and not partial or private laws affecting the rights of private individuals or classes of individuals. *Millet v. The People*, 785.

32. So far as the owner or operator of a mine shall contract for mining or selling of coal by weight, there is no constitutional objection to the statutes imposing upon him the duty of procuring scales for that purpose; but so much of the act of 1885 as provides that all contracts for the mining of coal in which the weighing of the coal, as provided for in that act, shall be dispensed with, shall be null and void, is in violation of the constitution. *Id.*

33. Such legislation for this particular class cannot be sustained as an exercise of the police power. *Id.*

34. Sect. 29, art. 4, of the constitution of Illinois, which enjoins legislation in the interest of miners, means legislation for the personal safety of miners,

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and relates only to the enactment of police regulations to promote that end. *Millet v. People*, 785.

35. The legislature has not the power to require the owners and operators of coal mines in this state to furnish scales, and employ a person to use them and keep books of entries of weights, for the benefit or information of the public, without first making compensation to the owners, that being tantamount to an appropriation to public use of private property, which is the cost of the scales, and a clerk to keep the books. *Id.*

36. Ordinances of San Francisco forbade any person to carry on laundry without consent of board of supervisors, except in brick or stone buildings. There were at the time about 320 laundries in San Francisco, of which about 240 were owned and conducted by subjects of China, and about 310 were made of wood, the same material that constituted about nine-tenths of the houses in San Francisco. All petitions of Chinese were refused, and all others, except one, were granted. *Held* (1), That provisions of 14th Amendment to Constitution of United States, are universal in their application, to all persons within territorial jurisdiction; and equal protection of laws is pledge of protection of equal laws. (2) That ordinances were so administered as to amount to practical denial by state of that equal protection of laws. *Yick Wo v. Hopkins*, 473.

37. *Semble*, That ordinances in question were void from their terms because they compelled men to hold their means of living at mere will of another, differing from case where discretion is lodged in public officers to grant or withhold licenses, &c. *Id.*

38. LEGISLATION IMPAIRING THE OBLIGATION OF CONTRACTS, 81.

39. THE CONSTITUTIONAL OBJECTIONS TO RETROSPECTIVE AND EX POST FACTO LAWS, 681.

II. Powers of Judiciary.

40. Where by law of state in which judgment has been obtained in suit against joint defendants, one of whom only was served, judgment is valid against defendant served, an action can be maintained thereon against him in courts of another state. *Harley v. Donoghue*, and *Renaud v. Abbott*, 208. See *Legal Notes*, p. 341.

41. When court of one state, in order to give full faith and credit to judgment rendered in another, must ascertain effect which it has in that state, the law of that state must be proved, like any other matter of fact; and consequently an allegation in declaration of such effect is admitted by demurrer. *Id.*

42. A United States Circuit Court has jurisdiction on *habeas corpus* to discharge from custody a person restrained of his liberty, in violation of the Constitution of the United States, although he is held under the authority of the state. *Ex parte Royall*, 344.

43. Where such a restraint is claimed, the United States Court has a discretion (to be subordinated to any special circumstances requiring immediate action) to proceed at once or await the result of his trial, and after trial it has still a discretion whether the accused, if convicted, shall be put to his writ of error. *Id.*

44. Upon construction of constitution and laws of a state, the Supreme Court United States, as a general rule, follows decisions of highest court of state, unless they conflict with or impair the efficacy of some principle of federal constitution, or of federal statute, or a rule of commercial or general law, on many subjects they are necessarily conclusive, such as relate to existence of her subordinate tribunals, and the eligibility of their officers, and passage of her laws. *Norton v. Shelby Co.*, 542.

45. On grounds of public policy, validity is frequently given to acts of officers *de facto*, but there can be no officer *de facto* or *de jure*, if there be no office to fill, and an unconstitutional act can create no office. *Id.*

46. In an action of ejectment the judgment turned on validity of sale of land by guardian of plaintiff. It appeared, that all proceedings for sale were regular save that no bond was entered by guardian, as statute provided, which court held did not avoid sale. This judgment was appealed from to highest state court, it being averred among other assignments of error, that plaintiff in error

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was deprived of his property without due process of law. The court affirmed the judgment of the court below, but took no notice of this assignment: *Held*, that the judgment, nevertheless, involved the decision of question whether there had been denial of right so claimed, and therefore, Supreme Court United States had technical jurisdiction; but judgment was so clearly correct that motion to affirm should be granted. The failure to enter the bond was at most an error of the court. A state cannot be deemed guilty of violation of constitutional obligation referred to, because one of its courts, while acting within its jurisdiction, has made an erroneous decision. *Arrowsmith v. Harmoning*, 542.

III. Eminent Domain.

47. Land may be taken for public cemetery, even though expense may exclude some. *Association v. Beecher*, 737.

48. In proceedings to condemn strip of land for railroad track, which crossed a pond, supplying owner's steam mill with water, on question of damages to mill property not taken, defendant gave estimates on basis that pond would be destroyed as water supply to mill, and that there would be no other source of supply. Petitioner then offered to show that certain water-works would furnish mill regularly with all the water it might require at less cost than that of pumping from the pond, and also that a creek flowing nearer the mill than the pond, had a capacity to furnish better water in abundance for the use of the mill, which the court refused to admit. *Held*, that the court erred in excluding the evidence. *Railroad and Coal Co. v. Switzer*, 793.

CONTEMPT. See HABEAS CORPUS, 2.

1. Where order issued against foreign corporation, defendant, to show cause why it should not be punished for contempt, and the agent of said corporation who was designated by it in accordance with law of state where suit was brought as person on whom process may be served, purposely avoided being served with said order; and an order was entered that service be made upon "the attorneys of record herein of said defendant:" *Held*, that such service was valid. *Land Co. v. Yuba County*, 280.

2. Defendant in suit procured postponement through counsel on ground that he was too ill to attend court. Plaintiff's counsel, suspecting deception, applied for an attachment for contempt. An order to show cause was issued and served, but defendant did not appear; his counsel appeared for him and filed answer, asserting his illness and disclaiming intention to disobey court. To this plaintiff filed no reply. A hearing was then had in absence of defendant against protest of his counsel, and court found him guilty and sentenced him to pay fine and costs, the latter taxed as in an ordinary civil suit. *Held*, 1. That court below having found defendant's conduct to be a contempt, appellate court could not, as matter of law, say it was not so. 2. The contempt not being committed in its presence, court could only find defendant guilty on regular proof, making a trial necessary. 3. That as the contempt was a criminal one, a civil proceeding for its punishment was irregular; and that the proceeding should have conformed as nearly as possible to those in criminal cases. 4. That court could not proceed in defendant's absence, and that he had a right to be heard. 5. That affidavits were improperly admitted as evidence on the trial; also, a deposition taken on part of plaintiff. *Welch v. Barber*, 72.

CONTRACT. See ACTION, 6. BANK, 10-13. BILLS AND NOTES, 21. COMMON CARRIER, 2-4, 8, 12. CONFLICT OF LAWS, 2-4. CONSTITUTIONAL LAW, 7. CORPORATION, 30, 32. DAMAGES, 10, 11. EQUITY, 17, 18, 20, 22. EVIDENCE, 21. FRAUDS, STATUTE OF, 7. HUSBAND AND WIFE, 15. INFANT, 4, 5. INSURANCE, 25, 26, 28. PARTNERSHIP, 3. PUBLIC POLICY, 1. RAILROAD, 13, 14. SALE, 5, 7, 11-14. SET-OFF, 3. SHIPPING, 1, 2. SPECIFIC PERFORMANCE. TELEGRAPH, 8. UNITED STATES, 1.

1. When written agreement consists of more than one distinct writing, all the parts should be given due weight. *The Cin., &c. Co. v. The Ind., &c. Co.*, 474.

2. Mere bid in answer to advertisement for proposals for building does not constitute. Conditional acceptance, such as requiring bond, delays completion of contract until condition is complied with. *Howard v. Maine School*, 609.

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3. Where corporation acts through building committee, majority must concur in making or varying contract. *Howard v. Maine School*, 609.

4. An offer made in Boston, Mass., and to stand until next day, was accepted by telegram from Providence, R. I. *Held*, that contract was completed in Rhode Island, though to be performed in Massachusetts. *Perry v. Iron Co.*, 671.

5. A contract between physician and person injured by railroad company that physician shall explain to company's counsel and medical adviser the nature of injuries, and be paid for such service a sum graded by amount received from company is illegal and void. *Thomas v. Caulkett*, 133, and note.

6. Under a contract to deliver 5000 tons of rails, to be shipped at rate of about 1000 tons per month, seller's failure to ship required quantity in first month gives buyer right to rescind whole contract. *Norrington v. Wright*, 47, affirming same case 21 Am. L. Reg. (N. S.), 395.

7. Upon contract of sale to be performed by a series of deliveries and payments at stated intervals particular defaults by one party will not release the other, unless conduct of party in default be such as to evince intention to abandon contract. *Blackburn v. Reilly*, 59.

8. One partner agreed in writing to sell to a copartner his interest in company's property, consisting of store and stock of goods, worth \$25,000, on certain terms, with proviso, that whichever broke the contract, should forfeit to the other \$500. *Held*, that \$500 were intended by parties as liquidated damages. *Maxwell v. Allen*, 542.

9. To constitute contract of sale of land by acceptance of offer to sell, acceptance must be unconditional, not "provided the title is perfect." At any time before unconditional acceptance of offer and compliance with its terms it may be withdrawn. *Corcoran v. White*, 737.

10. Offer in writing to subscribe to capital stock of railroad company, conditioned upon construction of its road along designated route, is revocable until delivered to and accepted by such company; death of party works such revocation. *Wallace v. Townsend*, 73.

11. Contract giving party right to use fence of race course for advertising purposes for period of years, confers right to use inside as well as outside of fence, and includes right of entry on premises to reach inner surface of fence, which latter right is not a mere revocable license, but a right of way in gross. *Willoughby v. Lawrence*, 672.

12. The fact that a regular practising physician failed for a short time to register under sect. 1409, *et seq.*, Illinois Code, owing to no book having been provided for the purpose, will not defeat his right to recover for professional services rendered during that period. *Parrish v. Foss*, 140.

13. G. wrote to nephew in Germany that if he would come to this country and take care of him and wife, who were childless, he would leave him all his fortune. Nephew came and took care of uncle and aunt for ten years, when uncle died. *Held*, that this constituted a contract enforceable by nephew against legatees and representatives of uncle, claiming under will which made no provision for nephew. *Schutt v. Miss. Soc.*, 610.

14. Railroad company contracted to give B. certain rights "over its entire line of railway, and on all roads which it controls or may hereafter control by ownership, lease or otherwise." *Held*, that though railroad company, by owning a majority of stock of another railroad company, may have all the advantages of a control of the road, yet that is not the control itself within the meaning of the contract. *Car Co. v. Rd.*, 140.

15. Where an employee, engaged under a contract for a specified time, the wages being payable in instalments, is wrongfully discharged before expiration of period of hire, and all wages actually earned at time of discharge have been paid, an action will not lie to recover future instalments as though actually earned, but remedy is by action for damages for breach of contract, and one recovery on such claim is bar to future action. *James v. Commissioners Allen Co.*, 521, and note; also 409.

16. The duty to perform a positive promise which is not contrary to law or public policy, or obtained by fraud, imposition, undue influence, or mistake, is

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an obligation in morals, and being so, it is sufficient consideration for express promise. *Bentley v. Lamb*, 632, and note.

17. A. gave B., who had been in his employ for years, due bill for \$3000, payable one year after his death. This was given in pursuance of agreement, wherein he agreed to do so, and stated that it was as additional compensation for services rendered. A. died, and suit being brought on due bill, his executors set up want of consideration. *Held*, that services rendered, though partly paid for, were sufficient consideration for due bill. *Id.*

18. Treasurer of savings bank made his note to bank for \$2000, and secured it by assignment of insurance policy on his own life, for purpose of making up to bank, a loss on loans for which he was neither morally nor legally responsible. Note and policy were found by trustees of bank after treasurer's death, which was first they knew of them. *Held*, 1. That note was without consideration and void ; 2. That assignment of policy was void for want of delivery. *Bank v. Copeland*, 72.

19. Plaintiff contracted to build house for defendant by time certain, for \$2250, of which \$500 was to be paid in advance, and balance to be raised by mortgage on house, which was to be negotiated by plaintiff. He failed to negotiate mortgage and to complete house by time specified, but was allowed to continue work for two months after, when defendant took possession and finished it. *Held*, that defendant waived materiality of time ; that by stopping plaintiff she virtually refused to permit him to raise money by mortgage ; that defendant cannot complain that jury were instructed that plaintiff could recover what his labor and materials were worth to defendant, because she admitted, if liable, that this was correct rule, and no exception was taken to the charge as to damages. *Foster v. Worthington*, 672.

20. A. agreed to sell B. a quantity of corn at a stipulated price, to be delivered at a day named, and B. promised to make advances on the contract to A., of what money he might require. In a suit on the contract for non delivery of corn, it was *held*, that evidence of a custom requiring the vendor to give to vendee his note, on receiving such advances, was inadmissible on behalf of B., as inconsistent with the express contract. *Gilbert v. McGinnis*, 139.

21. Contract for sawing and delivery to purchaser, of lumber, provided that he should measure same when delivered, and pay for only such as was absolutely clear and suitable for certain purpose. *Held*, that while it gives buyer right to pass upon quality of lumber, it does not make his decision beyond review. He is bound to receive and measure such lumber as complies with contract, although in his judgment, it is not of proper quality ; and testimony of witnesses who saw lumber after it was sawed, in the timber, and when it was being shipped, is admissible to show its quality when delivered. If injured while being shipped, such fact might be shown. *Mulliner v. Bronson*, 280.

22. A. having *bona fide* claim against C., placed it in hands of attorney for collection, who exhibited it both to C. and to B., his father, and informed them of consequences of suit, which he was instructed to institute. Afterwards, B. obtained bill of sale from son, of all his property, and upon being told by A., that he was going to send sheriff up "that day ;" that he was not going to stop for bill of sale, "it was a fraud," replied "you keep quiet and you will get your money ; I guess I am worth it." A., relying on promise of B., left him and immediately stopped further proceedings : *held*, that the forbearance to sue constituted sufficient consideration for B.'s promise, and A. was entitled to recover against him. *Bowen v. Tipton*, 344.

23. Plaintiff sued in assumpsit to recover balance due for services, advances and interest on purchases and sales of stock. Both plaintiff and defendant resided in York, Pa., where former conducted business of banker and broker. Plaintiff bought and sold for defendant, on margin, in markets of New York, Baltimore, Chicago and Philadelphia. Defendant pleaded specially that by law of Pennsylvania, where contracts were made and to be performed, they were gambling transactions and void. *Held*, 1. That it was competent for defendant to show that, although in form the transaction was perfectly legal, it was in fact a mere guise under which a gambling transaction might be conducted. 2. That although plaintiff acted merely as defendant's broker and was suing not on the contracts themselves, but for services performed and money advanced for de-

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fendant, he stood in same position as if seeking to enforce original agreement and could not recover for services rendered in forwarding a gambling transaction. 3. As to the *locus* of the transaction, jury should have been given the law of Pennsylvania as comprised in the decisions of that state bearing on wagering contracts within its limits. 4. That action being for services rendered defendant, it was plaintiff's relations with him on which the suit was based; and parties with whom he dealt in making purchases and sales were nowise connected with the suit. 5. That validity of transaction was to be tested by Pennsylvania cases, according to which, if, as defendant claimed, the understanding between plaintiff and defendant was that no stock should be delivered, but a mere settlement of differences made, the transactions were wagers and no recovery could be had by plaintiff. *Stewart v. Shall*, 796.

CONTRIBUTION. See COSTS, 2.

CONTRIBUTORY NEGLIGENCE. See NEGLIGENCE.

CONVERSION. See WILL, 15.

COPYRIGHT.

1. The judges and reporter being paid by the state, it can copyright their work and say when and in what manner the decisions of the court shall be published. *Gould v. Banks*, 738.

2. The courts and their records are open to all; but the judges' opinions are not part of the records, and are accessible to all who desire to use them to enforce their rights. *Id.*

3. If owner of subsisting copyright seeks to enjoy exclusive right of selling published work by making sales directly and only to individual subscribers, the statute protects his monopoly from interference by other dealers offering surreptitiously obtained copies of genuine work, without his consent, unless there be something in circumstances of particular case to estop him from relying on privileges of his monopoly. *Publishing Co. v. Smythe*, *Legal Notes*, 668.

CORPORATION. See ATTACHMENT, 2-5. CONSTITUTIONAL LAW, 4. CONTRACT, 3. EQUITY, 3. INSURANCE, 1. MALICIOUS PROSECUTION, 2. MANDAMUS, 8. MORTGAGE, 7. NEGLIGENCE, 17. PUBLIC POLICY, 2, 3. RAILROAD, 7. SALE, 10. WILL, 6, 7.

1. Corporation colorably organized, incurred debts, on which judgments were recovered. After incurring those debts organization was perfected and mortgages given. *Held*, that judgments had precedence. *Bergen v. Porpoise Co.*, 610.

2. Where a director receives property for his vote on a proposed contract with the corporation, he is a trustee for such property, and it may be recovered from him in a suit by a receiver of the corporation. *Bent v. Priest*, 115, and *note*.

3. In constructive trusts arising from fraud, if the facts constituting the fraud are open, the Statute of Limitations commences to run at once; but if the facts are secret the statute does not commence to run until their discovery. *Id.*

4. Turnpike company which collects tolls is directly liable to those who travel upon it, for injuries occasioned by want of repair of road, without any express statutory provision. *Turnpike Road v. Crowther*, 73.

5. Where differences in grade exist, company is bound to make safe and convenient turnouts to side roads, and where they are necessarily dangerous to provide proper safe guards. *Id.*

6. Capital stock cannot be reduced except by express legislative authority. *Seignouret v. Home Ins. Co.*, 29, and *note*.

7. Such authority is not conferred by statute authorizing stockholders to make modifications, additions or changes in their act of incorporation, or to dissolve it, with assent of three-fourths of stock. *Id.*

8. *Semble*, that writing off the value of shares so that par value and estimated value may be equal, the actual capital not being affected, can only be accomplished by consent, or clear power given in charter. *Id.*

9. New Jersey statute of 1880, authorizing any railroad to lease or merge with

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any other, does not authorize such lease by directors against minority of dissenting stockholders, so far as latter's rights are affected. *Mills v. Central Rd.*, 610.

10. Provision of general corporation act that charters thereafter granted shall be subject to alteration, suspension or repeal, in discretion of legislature, does not incorporate act of 1880, *supra*, in defendant's charter so as to injuriously, affect stockholder's vested rights. *Id.*

11. Where there is no legislative authority for ascertaining damage inflicted upon dissenting stockholders by majority delivering their vested rights by illegal lease, and awarding them compensation therefor, court will annul lease and restore complainants to original position. *Id.*

12. The mere granting of a charter, it not appearing on the face of the incorporating act or otherwise, that the named corporators had applied for it or accepted the grant, does not create a corporate body. *Smith v. Mining Co.*, 280.

13. A charter can be accepted and the corporation organized only within the limits of the state creating it; and this rule should be enforced in the tribunals of the state in which the unauthorized acts were done or the suit was instituted, as well as by the courts of the incorporating state. *Id.*

14. Upon dissolution of corporation (other than moneyed, trading or municipal corporation) by expiration of charter, all of its property not validly alienated before dissolution reverts to the grantor. *St. Philip's Church v. Zion Church*, 406.

15. Where corporation having no adopted seal, directed conveyance made of lot of ground, and deed was executed, purporting to be under seal of corporation, attested by its president, and was signed by such president, and a wafer was attached, intended as seal of the corporation: *Held*, that the wafer was the corporate seal to this deed. *Id.*

16. Allegations in bill that company is insolvent and has suspended business for lack of funds, not sufficient to have corporation declared insolvent and receiver appointed; facts must be set out from which insolvency shall appear. *Construction Co. v. Schack*, 140.

17. Sections 16, 34 and 57, of Corporation Act of New Jersey (Rev. p. 182) construed. *Id.*

18. Courts of Maryland will not interfere in controversies relating only to the internal management of affairs of foreign corporation. Such controversies must be settled by courts of state creating the corporation. *Mining Co. v. Field*, 280.

19. Where act of foreign corporation affects one solely in his capacity as a member of the corporation, such act may be said to relate to the management of the internal affairs of corporation; but it is otherwise where it affects his individual rights only. *Id.*

20. Bill by "Drummond Tobacco Co.," to enjoin incorporation of another company in same city as "Drummond-Rundle Tobacco Co.," will not be sustained unless evidence satisfies mind of chancellor that plaintiff would thereby be injured in its business. *Drummond Tobacco Co. v. Rundle*, 289.

21. So the use of any particular name by a corporation will not be enjoined unless it is clearly shown that complainant will probably be injured thereby. *Id.*

22. The directors of a savings bank, though unpaid, are responsible for want of ordinary care and being regarded as trustees for depositors, the statute of limitations is no bar to an action against them for mismanagement. *Williams v. McKay*, 141.

23. Where bill filed shows systematic violation of charter by president, it raises a *prima facie* presumption that directors were aware of the fact and the latter cannot demur on ground that misconduct is not traced to them. *Id.*

24. Where by-laws of private corporation for profit, make it duty of president to exercise general supervision over its entire business, and provide that all company's property shall be under his control, and such president for number of years before, had acted as its attorney, there will be evidence of his authority to employ attorneys to appear, &c., for corporation. *Wetherbee v. Fitch*, 738.

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25. Attorney must have special authority to compromise a suit; but accepting benefit of settlement may ratify it. *Wetherbee v. Fitch*, 738.

26. Where charter authorizes purchase of land for certain purpose, in absence of evidence it will be presumed that any land purchased was for authorized purpose. *Mallet v. Simpson*, 344.

27. Where charter of railroad company authorized purchase of land for procuring stone and other materials necessary for construction of road or effecting transportation thereon, *held*, that charter authorized purchase of land to get cross-ties and fire wood. *Id.*

28. Statutes of mortmain were never adopted in North Carolina. *Id.*

29. Conveyance to corporation of land which its charter forbids its holding or taking title to, is valid until vacated by direct proceedings instituted by the sovereign for that purpose. *Id.*

30. Secret agreement made with subscriber to stock of railway corporation, who subscribes with others, that he shall pay only part of his subscription, is fraudulent as to other subscribers and his subscription will be binding for whole amount. *Railroad Co. v. Ennor*, 672.

31. Subscription to railway company to take certain number of its mortgage bonds, containing clause that it is not to be binding, unless one hundred bonds are subscribed for, is not binding until that number are so subscribed. *Id.*

32. A subscription payable when company's road should be graded to a certain point, to be in force only until a day named, cannot be enforced without performance of condition. *Id.*

33. As a rule, officers of corporation are sole judges of the propriety of declaring dividends, but where right to dividend is clear, court of equity will compel its declaration. *Belfast Co. v. Belfast*, 73.

34. Where the papers by which an attempt is made in good faith, to organize a private corporation have gone through the public offices, and there has been uninterrupted and unchallenged user for a number of years, and valuable rights in good faith acquired, enjoyed and disposed of by such organization, it is a corporation *de facto*, and its corporate capacity cannot be questioned in a private suit to which it is a party. *Society v. City*, 73.

35. A judgment of ouster against pretended corporation by reason of defective proceedings of incorporation, is not retroactive upon rights acquired, &c., in transactions in good faith with such acting corporation. *Id.*

36. A statute provided that members of every incorporated manufacturing company should be liable for all debts of corporation until capital stock was paid in and certain certificates filed. *Held*, that liability extended to all holding stock when debt was contracted, and also to all who were stockholders when liability was enforced, but not to those buying stock after debt was contracted and selling same before liability was enforced. *Sayles v. Bates*, 672.

37. Another statute gave to stockholder paying such debts action for contribution against stockholders "originally liable" with him. *Held*, all who were stockholders when debt was contracted, and also all who were stockholders when liability was enforced could be made to contribute. *Id.*

38. Trustees holding stock are liable to contribute from trust funds in their hands. Married women are also liable to contribute, the liability being statutory and incident to ownership of stock. *Id.*

COSTS.

1. Where board of aldermen have increased and are increasing city debt beyond statutory limit, the aldermen may be required personally to pay costs of action by citizens to enjoin further increase. *Scott v. Alexander*, 209.

2. In suits where one person incurs expense in rescuing property for benefit of many, court of equity has power to direct that expenses so incurred shall be paid from common fund. *Merwin v. Richardson*, 74.

COUNTY. See MUNICIPAL CORPORATION.

COURTS. See CONTEMPT. COPYRIGHT, 1, 2. TRIAL.

Although a statute authorizing grant of letters of administration to creditors upon failure of relatives to apply in specified time, contains no provision for notice to relatives, Orphans' Court may, by rule, require previous notice to them. *Gans v. Dabergott*, 187, and note.

COVENANT.

1. Action at law cannot be maintained after assignee has severed his relation to land, in respect to breaches of covenant committed during his holding. Remedy in such case is in equity. *Donelson v. Polk*, 474.

2. Covenant in deed for land containing a quarry, that grantor will not open or work, or allow to be opened or worked, any quarry on certain farm owned by grantor adjoining land conveyed, cannot be enforced against assigns of grantor. *Norcross v. James*, 64.

3. Where A.'s land was bound by a covenant to keep open a private road for the use of the owner of an adjoining tract, and A. encroached on said road by erecting piazzas, &c. *Held*, that the owner of the dominant tenement was entitled to an injunction and was not estopped by reason of having offered no resistance to erection of said obstructions, of which he had knowledge; and that statute of limitations was no defence. *Gawton v. Leland*, 141.

4. Agreement as to party wall provided that A. should build it, and that before B. should use it, he should pay A. one-half of its cost, and that the provisions of the agreement should run with the land. *Held*, that the agreement to pay one-half the cost was personal to A., and that wall when completed, became the property of each, although A. had right to retain possession of whole as security for payment of sum due him. *Gibson v. Holden*, 610.

CREDITORS' BILL. See EQUITY, 11. RECEIVER. REMOVAL OF CAUSES, 3.

CRIMINAL LAW. See ACTION, 5. ATTORNEY. BILLS AND NOTES, 11, 12. CONSTITUTIONAL LAW, 22, 42, 43. ERRORS AND APPEALS, 2, 10. EXTRADITION. HABEAS CORPUS. SALE, 13, 14. SLANDER AND LIBEL, 4. SUNDAY.

I. Generally.

1. On appeal erroneous ruling will not be reversed if accused was not injured by it. *Swann v. State*, 474.

2. That A. employs B. in a legal business during the week does not of itself make A. liable for B.'s illegal acts on Sunday. *State v. Burk*, 673.

3. In criminal as well as civil cases, the rule is that insanity should be established by a preponderance of testimony, and not to the exclusion of all reasonable doubt. *Danforth v. State*, 141.

4. To be fugitive from justice within Act of Congress regulating extradition it is not necessary that party charged should have left the state after indictment found, or to avoid prosecution. *Roberts v. Reilly*, 209.

5. The reasonable doubt the jury is permitted to entertain in criminal cases must be as to the guilt of the accused on the whole evidence and not as to any particular fact in the case. *Davis v. The People*, 142.

6. Statute making it misdemeanor to "commit an act injurious to the public health or public morals, or the perversion or obstruction of public justice, or the due administration of the law," is unconstitutional and void for uncertainty, *Ex parte Jackson*, 209.

7. Before acts and declarations of felon can be put in evidence against alleged accomplice, conspiracy must be proved to satisfaction of trial judge. *Rowland v. State*, 209.

8. Acts and declarations of one accomplice, in absence of another, after deed done and criminal enterprise ended, are not admissible in evidence against latter. *Id.*

9. An act providing increased penalties for second and subsequent offences of burglary, grand larceny, robbery, forgery or counterfeiting, is not unconstitutional either as visiting penalties disproportioned to the offences, or as placing the defendant in jeopardy a second time for same offence. *Kelly v. People*, 397, and note.

10. Where such act provides that whenever any person convicted of either said crimes shall thereafter be convicted of any one of such crimes, he shall be liable to such increased penalty, the second offence need not be identical crime for which he was first convicted. *Id.*

11. The fact that constitution of state has been disregarded in course of judicial proceedings will not render judgment in which such proceedings termi-

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nate void, if error was not on jurisdictional point; nor can such judgment be collaterally impeached. *Kelly v. People*, 397, and note.

12. Conceding that trial by court of a criminal case, defendant having waived a jury, is erroneous, yet such error not being jurisdictional will not make conviction void; and such conviction of one of offences enumerated in above cited act will render a subsequent conviction of any of those offences a second conviction within the meaning of the act. *Id.*

13. Plea of guilty by principal offender, received and recorded, though sentence is not pronounced, is in all essential respects equivalent to a verdict of guilty returned and entered on the minutes, and is such a conviction of principal as authorizes court to proceed with trial of an accessory. *Groves v. State*, 543.

14. It is true, that before sentence, plea can be withdrawn and that verdict can only be arrested or set aside for cause shown, whether a judgment has been rendered on it or not. Still, so far as resorted to for showing guilt of principal *prima facie* in order to bring on trial of accessory, they stand on same footing. *Id.*

15. The constitutional provision that every person charged with an offence shall have privilege of counsel, would amount to nothing if counsel for accused were not allowed sufficient time to prepare his defence. *Blackman v. State*, 543.

16. Where crime charged was murder, committed early in September, and court met on fourth Monday same month, bill of indictment was found on Tuesday, and on Wednesday court assigned accused counsel and announced it would take up case on Friday following, and counsel asked for continuance, as they had not had time to confer with prisoner and prepare his defence, he having been brought from jail of another county late on Thursday evening before, the continuance should have been granted. *Id.*

17. There is no such inflexible rule of law as that no person can be convicted on testimony of accomplice unless corroborated by other evidence. It is for jury to pass on credibility of accomplice as on that of every other witness. Statements of accomplice should be received with caution, and court should so advise jury, but if testimony carries conviction, and jury are satisfied of its truth, they should give it same effect as that of witness not implicated in offence. *Bacon v. State*, 543.

18. It is not error to charge that if witness sworn in case is an accomplice, his testimony without more, cannot convict, but if jury believe from evidence, that witness was not an accomplice, then his evidence alone may convict; and this would be true though he was charged in indictment with the crime, and his own testimony alone showed he was not an accomplice, and though he was present, if that presence was constrained, or he was enticed there by false claim of defendant and another to the property and an anticipated lawsuit about it. *Bernhard v. State*, 543.

II. *Intoxicating Liquors.*

19. Licensed dealer in spirituous liquors cannot escape penalty for unlawfully selling to minor by proving that sale was made by his barkeeper, during his absence, without his knowledge, and contrary to his instructions given in good faith, and which were so understood by barkeeper. *Carroll v. State*, 74.

20. Under statute imposing fine for sale of liquor to minor, no conviction can be had if accused made sale after exercise of proper caution and in honest belief that purchaser was of lawful age. *Kreamer v. State*, 517, and note.

21. An indictment charging single sale to one person only, for one price, of a number of commodities, the unlawful sale of either one of which would, under the statute, constitute a public offence, is not bad for duplicity. *Id.*

III. *Larceny.*

22. It is error to instruct jury that the possession of stolen property soon after theft is sufficient to convict, unless satisfactorily explained, and that an *alibi* must be clearly and satisfactorily proved; if they have a reasonable doubt of prisoner's guilt, they should acquit: *Hoge v. People*, 738.

23. Defendant was indicted for larceny of gold watch. On trial, an expert testified that the property stolen was not a gold watch, though known to the

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people as such, but was called by the trade a filled case. All the witnesses spoke of it as a gold watch, and it had every appearance of being such. *Held*, that there was no variance between the allegation in the indictment and the proof. *Glover v. State*, 673.

IV. *Murder*. See *supra*, 16.

24. Where there is no doubt that prisoner began encounter resulting in death, previous threats of deceased are not admissible, there being no evidence of intention at time of killing to execute the threats. *Bond v. State*, 345.

25. Nor is evidence of reputation of deceased as violent, quarrelsome and dangerous man admissible when prisoner is assailant, without reasonable ground to believe himself in danger of serious bodily harm. *Id.*

26. On trial for murder, evidence of what occurred at saloon half a square from where homicide took place, four or five minutes before the killing, is admissible, to show general conduct of prisoner immediately preceding the killing, that he was armed and in frame of mind likely to result in mischief. *Kernan v. State*, 792.

27. What was said and done by others at same time and in company with prisoner, was only a part of what he was directly connected with and necessary to an intelligent appreciation of his actions. *Id.*

V. *Wife Beating*.

28. Where several witnesses testified to distinct beatings given the wife by the husband, at no great intervals apart, but all within two years before the indictment was found, no two of the witnesses testifying to the same cruel treatment, it was error for the court to compel the state to elect one of these transactions on which it would rely, and when the election was made, rule out all the evidence in relation to the others. *Member v. The State*, 141.

CUSTOM. See AGENT, 7. CONTRACT, 20. INSURANCE, 12, 26.

DAMAGES. See ATTACHMENT, 14. COMMON CARRIER, 13. CONSTITUTIONAL LAW, 9, 48. CONTRACT, 8, 19. HIGHWAYS, &c., 2. INJUNCTION, 2. OFFICER, 2. PATENT, 2. RAILROAD, 8. SPECIFIC PERFORMANCE. TRESPASS. UNITED STATES COURTS, 3, 4. WATERS AND WATER-COURSES, 3-5.

1. When a bond in usual form for \$500, was conditioned that the obligor should never open and keep a barber shop within a certain town, the sum named held to be a penalty and not liquidated damages. *Burrill v. Daggett*, 142.

2. Expenses of litigation do not fall under head of punitive damages, but stand by themselves, and may be recovered whenever defendant has caused plaintiff unnecessary trouble and expense. *Moseby v. Sanders*, 544.

3. Where cause of action is negligence of municipal corporation in improvement of street, injury is complete, and all damages, present and prospective, may be recovered; a second action will not lie for fresh damages resulting from said improvement. *City v. Voegler*, 101, *and note*.

4. *Semble*: A temporary wrong might be done under such circumstances as would make it reasonable to presume defendant would right the wrong before recurrence of loss, and in such cases a second action might lie for fresh damage. *Id.*

5. If lack of care and skill in devising plan of improvement is so great as to constitute negligence, municipality is liable for errors of judgment. *Id.*

6. Punitive not recoverable where conductor, in obedience to rules ordered purchaser of first class ticket to occupy car not so comfortable as one from which he was removed, but used no force or insult in removing him. *Holmes v. Railroad Co.*, 474.

7. Where plaintiff is aware of certain rules of railroad company, and takes passage to violate these rules and bring suit, his declarations to this effect are admissible in mitigation of damages. *Id.*

8. In action of lessee of mill, against lessor, for diversion of water, depriving plaintiff of demised water-power, evidence of profits made is admissible on question of damages, loss of profits being a consequence parties could reasonably have anticipated. *Crawford v. Parsons*, 406.

DAMAGES.

9. In determining value of lands taken for public purposes, their market value is the thing to consider. Compensation to owner is to be estimated by uses for which the lands are suitable, having regard to existing wants of community, or such as may be reasonably expected in immediate future. *Low v. Railroad*, 474.

10. Measure of, for breach of contract of sale of personal property, is difference between market price at place of delivery, and contract price. *Equitable Co. v. Balt. Co.*, 739.

11. If there is no regular market price at place of delivery, and goods are costly and difficult of transportation from a distance, and are to be used for manufacturing purposes, then market price may be arrived at, by deducting cost of manufacturing and price of raw material, from market price of manufactured article. *Id.*

DEATH. See CONTRACT, 10.

DEBTOR AND CREDITOR. See EQUITY, 11, 12. EVIDENCE, 21. FRAUD,

1. GUARANTY, 1. MORTGAGE, 16. SALE, 11, 12.

1. Retention of personal property by vendor after sale, is *prima facie* evidence of fraud, explainable by showing that the retention is inconsistent with the deed, or unavoidable or temporary, or for reasonable convenience of vendee. *Holliday v. McKinne*, 345.

2. Creditors of intestate can question his fraudulent transactions by proper proceedings in the courts. *Id.*

3. Better rule is not to permit representative of estate to question such transactions for benefit of creditors. *Id.*

4. Vendee who takes possession subsequent to sale, but before rights of creditors have accrued by attachment or otherwise, can hold property against creditors. *Gilbert v. Decker*, 739.

5. Presumption of fraud from retention of possession, is only raised in favor of attaching creditors or those who stand in their position, and does not exist in case of sale of property exempt from execution. *Id.*

6. It was shown that A. owed B. a debt which he had given a mortgage to secure; that B. purchased other notes of his without his knowledge: and that he had sent B. cotton to be credited on his indebtedness. *Held*, that A. manifestly intended to pay the mortgage debt, and that payment should have been so applied. *Holley v. Hardeman*, 544.

7. When one purchases goods, being insolvent and not intending to pay for them, and conceals his insolvency and his intention not to pay, he is guilty of a fraud, which entitles the vendor if no innocent third party has acquired an interest in them, to disaffirm the contract and recover the goods. *Johnson v. O'Donnell*, 142.

8. Where a bill in equity showed goods so purchased to have been fraudulently transferred to other parties also made defendants, it was held that the subject-matter being the goods, in order to avoid a multiplicity of suits, courts of equity would have jurisdiction, there being no objection of multifariousness or misjoinder of defendants. *Id.*

9. A debtor for the purpose of defeating his creditors, conveyed his property to his son with understanding that it should be reconveyed to him when requested, and if reconveyance was not demanded then that son should provide for him during his life, and have property at his death. *Held*, that the conveyance was merely colorable, that a secret trust existed for the grantor, and therefore, the sale was void both as to precedent and subsequent creditors. *Gordon v. Reynolds*, 142.

10. A. being indebted, conveyed his land, and afterwards judgments were obtained against him on this antecedent indebtedness. B., with notice of conveyances, advanced a sum sufficient to pay off these judgments, which were then assigned to him, and as further security, A. gave B. bond with higher rate of interest, and mortgage of land embraced in said conveyances. In action by B. against A. and his grantees to foreclose mortgage, *Held*, that the conveyances were not a fraud upon any rights which B. was seeking to enforce; and, therefore, whether A. owed any other debts at the time he made conveyances was irrelevant in this action. *Carrigan v. Byrd*, 209.

DECEDENTS' ESTATES. See CONFLICT OF LAWS, 5. DEBTOR AND CREDITOR, 3. ERRORS AND APPEALS, 7. INFANT, 1.

1. Debt due by decedent as surety on county treasurers' bond, is a "debt due to the public," and as such entitled to priority. *Baxter v. Baxter*, 210.

2. Executors' verbal statements to creditor of estate, that his claim was all right, and that they would pay it as soon as they had money enough, will not excuse creditor's neglect to present claim to them formally within time limited by order of court; nor will allegation that they have wasted the estate, unsupported by statement of facts, render them personally liable to creditors of estate. *Lewis v. Champion*, 209.

3. In a proceeding by an administrator for leave to sell land to pay debts the court, exercising a mere statutory authority, has no jurisdiction to determine conflicting titles to the land. It may determine all questions relating to the sale, but in respect to land can only find that decedent had a claim to same, and purchaser will take subject to adverse claims of title and must establish his right to possession by action in court of law where legal titles are cognisable. *Harding v. Le Moyne*, 148.

4. In such proceeding paramount owner of land is made defendant, he should assert his rights to prevent an estoppel *in pais*, even though an issue to determine same could not be entertained. *Id.*

DECEIT.

1. Plaintiff alleged in complaint that as sub-contractor in construction of building for defendant he had inchoate lien for his claim and was about to perfect it, when defendant, to prevent his doing so, falsely represented to him that she had paid original contractor in full, and that plaintiff, believing the representation, did not perfect his lien; claiming damages for false representation. *Held*, on demurrer to complaint that it presented good cause of action. *Alexander v. Church*, 739.

2. And held not to affect case, that it did not appear that original contractor was irresponsible, nor that demand had been made on him. *Id.*

DEED. See AMENDMENT, 4. EQUITY, 4. EVIDENCE, 3. FRAUD, 1. HUSBAND AND WIFE, 13. MORTGAGE, 23.

1. Maker may prove there was no acknowledgment of deed, but if acknowledged, officer's certificate is conclusive of terms. *Petty v. Grisard*, 210.

2. There cannot be a delivery of a deed to the grantee *in escrow*. Such delivery makes the deed an absolute one to the grantee. *Stevenson v. Cropwell*, 143.

3. Conveyance of land after delivery is binding on grantors without any acknowledgment. The purpose of acknowledgment is to prove execution of deed, and when this is otherwise proved, it is as binding as if properly acknowledged. *Robinson v. Robinson*, 673.

4. A "reservation" is something newly created or reserved out of the thing granted; an exception is part of the thing granted. *Elliott v. Small*, 714, and *note*.

5. Warranty deed conveyed parallelogram of land "containing five acres," but "reserving from said grant a strip, thirty-three feet wide on the south side of said tract, for a public street." *Held*, that fee to strip thirty-three feet wide was in grantee; and that if it was either an exception or reservation, it was the latter. *Id.*

6. A deed conveying to the grantee his heirs and assigns forever, the right of having and repairing a dam on certain premises, with the right to so much of premises as may be necessary on which to build and maintain the dam, conveys a fee in the land upon which the dam stands. *Inhabitants Searsmont v. Plimpton*, 143.

7. Assignee for benefit of creditors is not *bona fide* purchaser for value so as to make assignor's deed to him have precedence over deed of real estate from assignor to purchaser for valuable consideration, which was delivered before, but not recorded until after assignment deed; even though the creditors have executed a general release of all claims against debtor, in consideration of assignment. *Tyler v. Abergh*, 739.

8. Whether if release had been executed on faith of debtor's ownership of
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real estate in question, this would have constituted assignee or creditors *bona fide* purchasers within the meaning of Maryland code, *Quære?* *Tyler v. Abergh*, 739.

9. One who has accepted specific property in payment of specific debt, is within the act. *Id.*

10. General deed of premises lying upon bank of river, in which is constructed a canal, conveys grantor's rights to centre of stream. *Day v. P. Y. & C. Rd.*, 740.

11. Where the canal company had right only to use for canal purposes, bed and waters of such river, on ouster of such company from its corporate franchises, and its dissolution by order of court, the trustees winding up its affairs have no power to convey such rights, but they revert to the proper owners. *Id.*

DELIVERY. See **CONTRACT**, 18. **GIFT**, 3, 4.

DEMURRER. See **CONSTITUTIONAL LAW**, 41. **EQUITY**, 2. **FRAUDS**, **STATUTE OF**, 8. **LIMITATIONS**, **STATUTE OF**, 3. **MANDAMUS**, 4. **NEGLIGENCE**, 17.

DESCENT. See **CONFLICT OF LAWS**, 5, 9.

DEVISE. See **WILL**, 3, 6, 8.

DIVIDENDS. See **ATTACHMENT**, 5. **CORPORATION**, 33.

DIVORCE. See **HUSBAND AND WIFE**, I.

DOMICILE. See **CONFLICT OF LAWS**, 5, 6. **EXECUTORS AND ADMINISTRATORS**, 1. **UNITED STATES COURTS**, 1.

When a home of a person is once established in a town, it requires less proof to show continuance there, than would be necessary to show both establishment and continuance. Bodily presence at all times is not necessary to show continuance. The departure of a minor daughter from home for temporary employment, leaving behind articles not required for immediate use, even though she receives the wages of her labor for her own use, is not sufficient to raise presumption of emancipation, and these facts together with expression of an intention to return and actual returning to visit, to repair wardrobe, and on account of sickness, are sufficient evidence of continuance of domicile. *Inhabitants Searmont v. Inhabitants Thorndike*, 143.

DONATIO CAUSA MORTIS. See **CONFLICT OF LAWS**, 1. **GIFT**, 1, 2, 3.

DOWER.

When widow is entitled to dower in land which has been divided by partition between several persons, she may bring a separate suit against the owner of each portion. Perhaps she may proceed against all in one suit, but she is not compelled to do so. *Coburn v. Harrington*, 144.

EASEMENT. See **CONTRACT**, 11. **DEED**, 6. **EJECTMENT**. **HIGHWAYS**, 1. **LICENSE**, 2, 3. **WATERS AND WATER-COURSES**, 6-9.

EJECTMENT. See **HUSBAND AND WIFE**, 14. **MORTGAGE**, 22. **REMOVAL OF CAUSES**, 8.

Certain persons were permitted to build a public hall as a second story of new school house, and an agent authorized by the district leased that second story to the builders of it, with necessary easements of ingress and egress, and with equitable provisions as to use and repair of the building, &c., "so long as the building shall stand." The building was occupied in accordance with the agreement, for nearly thirty years, when the district voted "to sell the school house and lot under" the hall, and by deed their agent conveyed all their interest in the lot and building thereon. In a real action by the grantee against the occupants of the hall, the court, after discussing the nature of the titles, *held*, that defendants, having disclaimed all but the hall with its easements, and being in possession of that, have a color of title, and plaintiff had failed to show a better one. *Peaks v. Belthen*, 144.

ELECTION. See **WILL**, 12.

ELECTIONS. See **CONSTITUTIONAL LAW**, 2, 18.

EMINENT DOMAIN. See CONSTITUTIONAL LAW, III. DAMAGES, 9.

EQUITY. See ACTION, 1, 2. AGENT, 12. AMENDMENT, 1-6. ARBITRATION, 1, 2. ASSIGNMENT, 1-6. CORPORATION, 1, 6, 33. COVENANT, 1. COSTS, 2. DEBTOR AND CREDITOR, 9. ERRORS AND APPEALS, 1. EXECUTORS AND ADMINISTRATORS, 2. GIFT, 4. INJUNCTION, 3, 6. INSURANCE, 18, 24. LICENSE, 2, 3. LIEN, 1, 2. LIMITATIONS, STATUTE OF, 10. LIS PENDENS. MORTGAGE, 9, 10, 24. MUNICIPAL CORPORATION, 11-13. PARTITION, 2. PARTNERSHIP, 10, 11. PUBLIC POLICY, 3. RECEIVER, 7. TAX AND TAXATION, 6. TRADE-MARK, 3. USURY, 7.

1. Answer upon oath to bill in equity that does not call for answer upon oath, does not operate as evidence of facts stated therein. *Clay v. Towle*, 544.

2. Lord Bacon's ordinance, declaring that all suits under the value of 10*l*. shall be dismissed, is in force in New Jersey; and defendant may make the objection, either by demurrer or by motion on notice. *Allen v. Demarest*, 611.

3. Oral agreement by directors to indemnify one of their number who endorses promissory note for benefit of the corporation, is not within Statute of Frauds and remedy thereon at law is adequate. *Cortelyou v. Hoagland*, 210.

4. Stipulation in deed of lot in grounds of Camp-Meeting Association, prohibiting erection or use of buildings for stores, boarding-houses, hotels, or stables thereon, without consent of association, is enforceable by injunction. *Winipesauckee v. Gordon*, 475.

5. Equity to have the securities embraced in trust for benefit of creditors of different classes, marshalled and appropriated in exoneration of liens of less preferred class, is an equity against the debtor, and not against the doubly secured creditor. *Pope v. Harris*, 346.

6. Right of debtor to homestead is superior to that of all creditors except so far as it may be impaired by voluntary act of claimant. *Id.*

7. Debtor understandingly and deliberately conveying property to hinder or defraud creditors cannot recover it. *Nichols v. McCarthy*, 740.

8. But whether party guilty of independent fraud in receiving or retaining property upon such conveyance should be allowed to avail himself of fact that conveyance to him was made to defraud creditors, as defence against suit to recover property back, *quære*; court inclined to opinion that such qualification of rule would be reasonable. *Id.*

9. Where court of equity attempts to act directly upon property, whether real or personal, it is, in absence of statutory regulation, essential that said property be within territorial jurisdiction of court. *Johnson v. Gibson*, 673.

10. But where one claims property situate in foreign jurisdiction, which in good conscience belongs to another, the latter may sue him in equity wherever he may be found and compel a conveyance. In such case decree operates on person of defendant. *Id.*

11. Creditor may maintain bill to set aside fraudulent conveyance of his debtor wherever debtor and fraudulent vendee may be found. In such case court does not act upon land itself, but simply declares conveyance void, and removes same as an obstruction to creditor's legal remedy. *Id.*

12. Where debtor conveys all his property in distinct parcels to separate parties and dies, creditors' bill to set aside said conveyances for fraud may include all the grantees. In determining whether bill is multifarious much is left to discretion of court. *Brian v. Thomas*, 74.

13. Where several respondents, acting independently, deposited refuse material, &c., arising from operation of their mills into same stream, where it commingled into one indistinguishable mass before reaching complainant's premises; *held*, that all the respondents may be joined in same bill to restrain the nuisance. *Lockwood Co. v. Lawrence*, 75.

14. A receiver filed a bill in his own name to foreclose a mortgage made to A. in trust for B. It not appearing by the recitals of the bill that the decree appointing the receiver transferred to him the legal title which A., as trustee, had in the mortgage: *Held*, that A. was a necessary party to the bill. *Tyson v. Applegate*, 144.

15. Further recitals in the bill justified the conclusion that the decree divested B. of her interest in the mortgage, and vested that interest in three persons

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named in the bill: *Held*, that these three were necessary parties to the bill, but that B. was not. *Tyson v. Applegate*, 144.

16. The rule that *cestui que trustent*, as well as trustee, should be made parties to bill to foreclose mortgage is to be observed where the former are known and not so numerous as to render such practice highly inconvenient. *Id.*

17. It is not essential to enforcement of contract for sale of lands that it should be signed by complainant as well as by defendant. *Carskadden v. Kennedy*, 145.

18. A contract induced by fraudulent representations would not be enforced in equity, even though parties did not intend to make representations part of contract. *Id.*

19. If tender of purchase-money is refused by party on ground that he is not bound to convey, the propriety of tender cannot afterwards be objected to because there was a misdescription of land in deed which he was requested to execute at time of tender. *Id.*

20. Oral evidence is not competent to establish agreement to change description of land previously bargained for by a written contract signed by vendor. *Id.*

21. Where release to railroad company for injuries received is brought about by fraud, or where there has been no *aggregatio mentium*, or where unconscionable advantage has been gained by mere mistake or misapprehension, and where there is no gross negligence on part of plaintiff, equity will interfere, in its discretion, to prevent intolerable injustice. *Blair v. C. A. Rd.*, 611.

22. Chancery will not reform promissory note payable *in futuro*, with ten per cent. interest from date, by adding words "until paid," though parties intended it to bear that interest after as well as before maturity, if they omitted the words only because they thought them unnecessary. A contract written as parties intended it to be written, cannot be reformed for their mistake of its legal effect. *Rector v. Collins*, 544.

23. Assignee of void security, issued in lieu of valid one, is, in equity, subrogated to all rights of his assignor (the holder), in original security, and is entitled to have it delivered up to him, and if imperfect, to have it reformed by party that executed it, or his successor in office. *Goldsmith v. Stewart*, 210.

ERRORS AND APPEALS. See CRIMINAL LAW, 1, 7, 18. INFANT, 2, 3. PROHIBITION.

1. No appeal lies from an order of court of equity dismissing petition for rehearing. *Zimmer v. Miller*, 347.

2. Supreme Court of United States has jurisdiction to review judgment of state court, denying that defendant is entitled to immunity from second trial for same offence, by reason of Art. V. of Amendments Constitution United States. *Bohanan v. Womaska*, 544.

3. Upon motion to dismiss, this court cannot consider merits of question on which its jurisdiction depends, unless there is also a motion to affirm. *Id.*

4. Supreme Court of United States cannot review weight of evidence, and can look into it only to see whether there was error in not directing verdict for plaintiff on question of variance, or because there was no evidence to sustain the verdict. *Lancaster v. Collins*, 75.

5. Decision as to which party shall make closing argument is not reviewable. *Id.*

6. Motion filed April 26th 1886, to reinstate case docketed August 11th 1883, submitted January 7th 1886, and dismissed for want of jurisdiction January 19th 1886, was denied, because court was not willing, at so late a day, to receive and consider affidavits to supply defect in record. *Johnson v. Wilkins*, 475.

7. Where suit is brought against heirs to enforce their liability for payment of note on which ancestor was bound, and they plead neither counter-claim nor set-off, and ask no affirmative relief, and separate judgments are rendered against each for his proportionate share, the Supreme Court of United States has jurisdiction in error only over those judgments which exceed \$5000. *Henderson v. Wadsworth*, 75.

8. Defendant in execution delivered to sheriff sufficient money to satisfy it on

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his agreeing to return it if supersedeas was obtained by certain day, but, if not, to apply it to satisfy execution. No supersedeas having been obtained within time stated, sheriff paid over money in satisfaction of execution. *Held*, that defendant did not waive his right to prosecute writ of error to judgment on which execution was issued. *Burrows v. Michler*, 674.

9. In suit to collect interest due on certain bonds of a railroad by foreclosure of mortgage made to secure series of bonds aggregating \$500,000, the bill was dismissed. Suit was brought by two complainants for themselves, and all others in like situation who might join, but no one did so. The principal of complainants' bonds exceeded \$5000, but the interest, which suit was brought to recover, was less. *Held*, that matter in dispute was less than jurisdictional limit of Supreme Court United States. *Bruce v. Railroad*, 406.

10. Writs of error were brought to Supreme Court of Utah, to review judgments affirming judgments of District Court of Utah, rendered on convictions on indictments under sect. 3 of Act of Congress of March 22, 1882, for cohabiting with more than one woman. Jurisdiction of Supreme Court of United States was endeavored to be sustained under sect. 2 of Act of March 3, 1885, giving jurisdiction, on appeal or writ of error in any case "in which is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States." *Held*, that all that was drawn in question was whether or not there was error in administration of the statute, and the writs were dismissed. *Snow v. United States*, 475.

ESTOPPEL. See **BILLS AND NOTES**, 5, 17. **INSURANCE**, 31. **MORTGAGE**, 27. **MUNICIPAL CORPORATION**, 22. **PARTITION**, 1. **REMOVAL OF CAUSES**, 4.

EVIDENCE. See **ATTORNEY**. **BANK**, 20, 22. **BILLS AND NOTES**, 1, 8, 14, 19. **COMMON CARRIER**, 8. **CONTRACT**, 21, 23. **CONSTITUTIONAL LAW**, 24, 41, 48. **CRIMINAL LAW**, 7, 8, 17, 18, 24-27. **DAMAGES**, 7, 8. **ERRORS AND APPEALS**, 4. **EQUITY**, 1, 20. **FORMER RECOVERY**. **HUSBAND AND WIFE**, 5, 6. **INSURANCE**, 8, 25, 33. **LIMITATIONS, STATUTE OF**, 1, 2. **LUNATIC**, 3, 4. **MASTER AND SERVANT**, 14, 15. **MORTGAGE**, 13. **NEGLIGENCE**, 5, 13. **NOTICE**. **PARTNERSHIP**, 4. **PLEADING**, 3. **RAILROAD**, 10-12. **TELEGRAPH**, 2. **TRIAL**. **TRUST AND TRUSTEE**, 8, 10-12. **USURY**, 9. **WILL**, 1, 16-21, 27, 28. **WITNESS**.

1. Rule that communications between doctor and patient are confidential and inadmissible may be waived by patient. *Blair v. C. & A. Rd.*, 611.

2. Where records have been burned or destroyed, the entries in court minute books are admissible to establish regularity of proceedings. *Hare v. Holloman*, 346.

3. Where land has been sold under decree of court, and records have been destroyed, the recitals in the deeds are evidence of regularity of proceedings. *Id.*

4. Where question is as to authority given by telegram, party sending it should not, when sued, be permitted to testify what his intention was in sending it. *Meirhardt v. Mode*, 346.

5. Where telegrams do not contain entire contract, other parts may be proved by verbal testimony, or by other writings, or by both. *Id.*

6. Privilege of witness not to criminate himself is personal, and he must claim it under oath: neither party nor counsel can make the objection. *Club v. State*, 75.

7. Mere statement of witness on oath that he believes answer to question will tend to criminate him, will not suffice, if court be satisfied that answer will have no such effect. *Id.*

8. After witness has been sworn, protection may be claimed at any stage of inquiry. *Id.*

9. Witness to refresh his recollection may refer to memoranda made by himself or others, either originals or copies; such memoranda are not evidence to go to jury. *Erie Co. v. Miller*, 75.

10. In civil cases verdict of jury should be determined by mere preponderance of evidence, even though conclusion imputes to defendant guilt of felony. *Mead v. Husted*, 76.

11. Evidence of declaration of son of one of parties made in hearing of his

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father, who remained silent, was admitted against objection and jury instructed that it was for them to determine what significance they would attach to it. *Held*, no error. *Johnson v. Day*, 674.

12. Where a hypothetical case, covering the leading facts testified to, and practically admitted, is stated to a witness shown to be an expert, his opinion based on such hypothetical case, is proper evidence. *Lotz v. Scott*, 281.

13. The contents of a public record may be proved by the production of the record itself, or by a copy duly certified by proper officer or by an examined copy sworn to by an unofficial witness who made the examination. *State v. Lynde*, 145.

14. Instructions by grantor to attorney drawing deed are not ordinarily privileged communications. If grantor had instructed attorney to make conveyance to grantee in trust, it would be competent for attorney to so testify. *Todd v. Munson*, 741.

15. It is only where suit is upon cause of action, to which one party is dead, that other party is excluded, to preserve mutuality. *Horner v. Frazier*, 741.

16. Where such contract only incidentally arises in another suit, on another contract, and about something else, as matter of evidence, death of one party does not close mouth of other. *Id.*

17. Party disappointed in his witness may, to refresh witness' recollection, ask him if he has made contradictory statements, but cannot prove such statements by other witnesses, unless the witness is one whom law obliges party to call. *Hildreth v. Aldrich*, 346.

18. Where it is shown that evidence of indebtedness of party to decedent's estate, has been suppressed or destroyed by debtor, or some one acting in his interest, such indebtedness may be established by testimony, which would ordinarily be regarded as too indefinite. *Love v. Dilley*, 346.

19. Averments under oath in a pleading in an action at law, are competent evidence in another suit against the party making them; and the fact that they are made on information and belief goes only to their weight and not to their admissibility. *Pope v. Allis*, 145.

20. In action to recover for injuries received by one driving on highway, whose horse ran and bits attached to harness broke, and it became important to determine what effect breaking of bits had on accident. *Held*, (1) that testimony of witness was not admissible to prove that bits in a horse's mouth could be broken by pulling on reins; (2) or that witness had had bits broken in way similar to that the plaintiff claimed his were broken. *Carpenter v. Town of Corinth*, 674.

21. A receipt is only *prima facie* evidence of what it imports, and may be explained or contradicted by party signing; but a settlement and receipt in full of an unliquidated demand, when made with full knowledge of all circumstances, is bar to subsequent action on the demand, although creditor accepts amount paid under protest and threats of suit for balance claimed to be due. *Railroad v. Allen*, 544.

22. Montana Statute provided: "All acts of the legislature declaring that they should take effect from and after their passage, shall so take effect only at the seat of government, and in other portions of the territory allowing fifteen miles from the seat of government for each day." *Held*, where, by reason of this statute, the question whether a certain law was in effect at a certain time in a certain part of said territory, depended upon distance of that place from seat of government, the distance was a fact of which the court was bound to take judicial notice. *Hoyt v. Russell*, 406.

23. Where in suit brought by representatives of decedent, the testimony of living defendant, concerning conversations had with decedent, is admitted without objection, the court cannot afterwards strike it out, because its admission is opposed to the statute. Testimony so admitted, can be struck out only when its exclusion is demanded by some consideration of public policy. *Rowland v. Rowland*, 145.

24. THE COMPETENCY, AS WITNESSES, OF HUSBAND AND WIFE, 353, 417.

EXCEPTION. See DEED, 4, 5.

EXECUTION. See **CONSTITUTIONAL LAW**, 1. **EXEMPTION.** **HUSBAND AND WIFE**, 11. **PARTNERSHIP**, 1, 2. **OFFICER**, 1, 2. **RAILROAD**, 7.

1. Court of county, to sheriff of which execution has been issued from another county, has no jurisdiction of motion to quash levy upon lands in its county, advertised for sale by the sheriff, proper forum being the county of the judgment. *Mellier v. Bartlett*, 611.

2. Statutes of Rhode Island provide, that execution may issue against body of defendant whenever it shall be made to appear to court, which rendered the judgment that "defendant has been guilty of fraud * * * in the concealment, detention or disposition of his property." *Held*, that such execution properly issues where one owns a patent right which he refuses to apply to payment of judgment against him, and that it may issue without notice to defendant. *Petition of Keene*, 674.

EXECUTORS AND ADMINISTRATORS. See **COURT.** **DEBTOR AND CREDITOR**, 3. **DECEDENT'S ESTATES**, 2-4. **GIFT**, 2. **INFANT**, 1, 13. **INSURANCE**, 8-10, 25. **JUDGMENT**, 2. **LEGACY.** **LIMITATIONS**, **STATUTE OF**, 9-12. **USURY**, 2. **WILL**, 4, 5.

1. Non-residence does not, of itself, disqualify for office of administrator. *Ehlen v. Ehlen*, 475.

2. Executor cannot file bill against his co-executor, to compel latter to pay to him, certain claims alleged to be due from defendant to estate of decedent. *Whiting v. Whiting*, 281.

3. Where money is bequeathed to one for life, with remainder to another, and executor has converted it to his own use, remainderman cannot sue on bond of executor, during lifetime of tenant for life. *State v. Brown*, 281.

4. In such case, remainderman's remedy is to file bill in a court of equity, or apply to Orphans' Court for order on executor to bring money into court to be safely invested. *Id.*

5. Upon neglect of executor to comply with such order, Orphans' Court will revoke his letters, and appoint administrator d. b. n. c. t. a., and direct him to bring suit on testamentary bond of recusant executor. *Id.*

6. Where testator devises his estate among his children, equally, each child's share to be charged with all advances made or to be made to him or her, administrators c. t. a. have right, as against judgment creditors of one of his children, to impound so much of his share as may be necessary to pay judgment recovered against such administrators on bond of such child on which testator was surety. *Stieff v. Collins*, 741.

7. Mississippi Code of 1871, sect. 2173, by which any action to recover property, because of invalidity of administrator's sale, by order of probate court, must be brought within one year, "if such sale shall have been made in good faith, and the purchase-money paid," does not apply to action by heir, to recover land bid off by creditor for payment of his debt. In this case, no bond was given as required by statute. *Clay v. Field*, 76.

8. Administrator d. b. n. is officially interested in his predecessor's bond, to extent of unadministered assets, and may originate suit thereon, provided his interest has been specifically ascertained; otherwise he must have authority from probate court to bring the action, and cannot rely on authorization given to another. In either case he must allege such facts in writ, as will authorize him to bring and maintain action. *Waterman v. Dockray*, 545.

EXEMPTION. See **DEBTOR AND CREDITOR**, 5. **HUSBAND AND WIFE**, 11. **RAILROAD**, 7. **SURETY**, 4. **TAX AND TAXATION**, 4.

1. Statute exempting debtor's necessary working tools, not exceeding in value \$200, covers only tools used in manual labor; does not cover lawyers' law books. *Petition of Church*, 346.

2. Debtor is entitled to have his personal property exemption ascertained up to sale. *State v. Harper*, 347.

3. Allotment of exemption may be corrected until execution is returned. *Id.*

4. If property of debtor has been omitted by appraisers, they can correct the allotment. *Id.*

5. That mortgage is unregistered will not subject to sale under execution, property which would be exempt if there were no mortgages. *Id.*

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6. Members of insolvent firm are not entitled to exemptions allowed by law out of partnership property after it has been seized to satisfy demands of firm creditors. *Richardson v. Adler*, 545.

7. Right to exemption as head of family must exist at time creditor's lien attaches. To become head of family after attachment is levied will not exempt property from sale under judgment of condemnation. *Id.*

8. One partner, with assent of other, is entitled to have personal property exemption out of partnership property before partnership debts are paid, although he has individual property sufficient to make up the exemption. *State v. Kenan*, 475.

9. A general waiver of exemption of wages from the process of garnishment extending indefinitely is void. *Green v. Watson*, 145.

10. Whether special waiver upon specific wages in certain employment and for a certain time by specific orders on employers containing such specific waiver is enforceable, not decided. *Id.*

EXPERT. See **EVIDENCE**, 12.

EXTRADITION. See **CRIMINAL LAW**, 4.

1. It is immaterial whether warrant of governor of one state for arrest of fugitive from another is based on original affidavit or copy thereof, when either one presented to resident governor is certified to other governor as authentic. *Kurtz v. State*, 345.

2. Fugitive from justice cannot on *habeas corpus* impeach validity of affidavit on which extradition was founded, if it distinctly charge commission of crime. *Id.*

FACTOR. See **SET-OFF**, 3.

FENCE. See **CONSTITUTIONAL LAW**, 9, 10. **LIMITATIONS**, **STATUTE OF**, 4. **NEGLIGENCE**, 1, 16. **TAX AND TAXATION**, 8.

FIXTURES. See **LANDLORD AND TENANT**, 1, 2.

1. Innocent purchaser of certain dwelling-houses, in which portable furnaces had been placed so as to become part of realty, is not affected by agreement between his grantor and vendor of furnaces, by terms of which latter was to retain property in furnaces until paid for. *Stove Co. v. Way*, 660, and *note*.

2. Portable furnaces placed in cellar of house on row of bricks, set in circle, with pipes fastened to ceiling of cellar and connecting with registers, are annexed to and become part of realty. *Id.*

FOREIGN ATTACHMENT. See **ATTACHMENT**, 15.

FORMER RECOVERY. See **CONTRACT**, 15. **DAMAGES**, 3, 4.

Judgment of Supreme Court of New York city in favor of plaintiff is bar to further prosecution of action in Maine between same parties, and for same cause, although prior in commencement; such judgment may be pleaded specially or proved under general issue. *Whiting v. Burger*, 612.

FRAUD. See **ACTION**, 2. **AGENT**, 12. **ARBITRATION**. **ASSIGNMENT**, 7. **BANK**, 16. **BILLS AND NOTES**, 13. **CORPORATION**, 2, 3, 30. **DEBTOR AND CREDITOR**, 1-3, 5, 7-9, 10. **EQUITY**, 7-8, 12. **LIMITATIONS**, **STATUTE OF**, 9-12. **OFFICERS**, 6. **SALE**, 1, 6, 10. **VENDOR AND VENDEE**, 1.

1. In order to justify annulment of deed as void under statute of 13 Eliz., ch. 5, because made with intent to delay, hinder or defraud creditors, a fraudulent intent must be proved. Manner of proof. *Zimmer v. Miller*, 347.

2. Where party effects exchange of real estate, situate in another state, with person residing in this state, for property here, by false representations as to quantity of his land, location thereof and improvements thereon, knowing them to be false, an action on the case for fraud and deceit may be maintained by party injured. Under these circumstances reliance on truth of statements is not such negligence as to preclude recovery for fraud practised; though had property been near enough to permit examination without inconvenience a different rule might prevail. *Ladd v. Pigott*, 407.

FRAUDS, STATUTE OF. See **EQUITY**, 3. **LICENSE**, 2, 3 **TRUST AND TRUSTEE**, 9-13.

1. Agreement by third party, to accept for creditor his debtor's draft for amount of debt, is same as promise to pay debt. *Chapline v. Atkinson*, 211.

2. Parol promise to pay another's debt is not within statute when it arises upon new and original consideration between newly contracting parties. *Id.*

3. Description of the land in agreement for its sale is sufficient, if it so describes a particular piece or tract that it can be identified, located or found. *Lernte v. Clark*, 741.

4. An express trust between the grantor and grantee of land that the grantee is to hold the land in trust for the grantor is invalid, unless evidenced by some writing signed by the grantee. *Stevenson v. Craped*, 141.

5. Where there is an express trust there cannot be an implied trust; and in case of a voluntary conveyance, no resulting trust can arise in favor of the grantor. *Id.*

6. Where the moving consideration for the promise to pay money is the liability of a third person, the promise must be in writing; but if there is a new consideration from promisee to promisor added, that makes it a new agreement which is not within the Statute of Frauds. *Power v. Rankin*, 146.

7. So where holder of chattel mortgage relinquished and permitted property on which it rested to be delivered by his debtor in consideration of promise of third party in whose hands \$1000 had been placed to pay it to him on delivery of property, it was held that the verbal promise to pay was not within the Statute of Frauds. *Id.*

8. It is not necessary in pleading to allege that promise was in writing. Such a plea, in addition to general issue plea, is an argumentative answer to declaration, asserting nothing not cognizable under general issue, and is therefore demurrable. *Horner v. Frazier*, 741.

9. Where, as part of consideration of sale and transfer of a lease for ten years of real estate, the assignee agreed "to assume the covenants and pay the rent agreed in said lease" such contract is not a promise to answer for default of another within Statute of Frauds. *Wolke v. Fleming*, 282.

GARNISHMENT. See **ATTACHMENT**.

GIFT. See **DONATIO CAUSA MORTIS**.

1. Bills, bonds and promissory notes, and all other evidences of debt, although payable to order and not endorsed, may be given as *donationes causa mortis*, and donee may sue on them in his own name. *Kiff v. Weaver*, 476.

2. Assent of personal representative is not essential to validity of *donatio causa mortis*. If needed to pay debts it may be recovered by representative, but *residuum* goes to donee. *Id.*

3. Before his last sickness, G. had expressed a desire that his children should have his notes (of which most of his property consisted) and his son should have his farm. On the morning of the day of his death, and in the presence of a daughter's husband, herself and sister, G. called the daughter and said to her "my notes are in a little box on the bureau there, I want you to take them and divide them equally among you children," he told her to get the key, which she got and tried in the box and gave to her husband for safe-keeping. *Held*, that these facts do not show such a delivery as constitutes a valid gift *causa mortis*. *Gano v. Fisk*, 76.

4. Father made assignment under seal (as gift, though expressed to be for value), of certain shares of stock, certificates for which at the time had been made out in name of assignor, but remained uncut in certificate book of corporation. The assignment, which contained no power of attorney authorizing transfer, was left by assignor with attorney of corporation, with whom also was left book of certificates, with instruction that, upon obtaining assent of mortgagee of corporation, transfer should be made to daughter on books of company. No transfer, however, was made in lifetime of father. *Held*, 1st. That assignment was incomplete and could not be enforced in equity. 2d. That there was no element of trust in the case. 3d. That if father had declared he held or would hold the shares in trust for daughter, perhaps equity would enforce such trust, though voluntary. *Baltimore Co. v. Mali*, 741.

GUARANTY.

1. Agreement by creditor to extend time of payment of debt guaranteed upon debtor paying him sum of money due on another transaction, is not based on good consideration and will not discharge guarantor. *Solary v. Stutz*, 545.

2. Appended to paper purporting to be bill for merchandise sold by A. to B., was following instrument: "In consideration of seven and a half per cent. I guarantee the above bill to the amount of two hundred dollars," signed by S., which had been written by A. and presented by him to S. for his signature at conclusion of negotiation between them, signed by S. and returned to A. *Held*, that this was a guarantee, and not an offer to guarantee, which would require acceptance by beneficiary and notice thereof to guarantor. *Id.*

GUARDIAN AND WARD. See INFANT, 1-4. SURETY, 1.

HABEAS CORPUS. See CONSTITUTIONAL LAW, 42.

1. A writ of *habeas corpus* is not removable from a state court into a Circuit Court of the United States, under Act March 3, 1875, c. 137, sect. 2. *Kurtz v. Moffitt*, 136.

2. Petition for, showed that petitioner was regularly brought before grand jury as witness, that he refused to answer certain questions, and that court thereupon fined him twenty-five dollars, and on refusal to pay same, ordered him to stand committed to county jail until fine and costs should be paid. *Held*, that if court erred in imposing fine, remedy was by appeal or writ of error, and not by writ sought. If order had been simply a committal until petitioner answered questions, different question would be presented. *Ex parte Smith*, 742.

HEIR. See ACTION, 1.

HIGHWAYS; STREETS. See CORPORATION, 4, 5. MUNICIPAL CORPORATION, 1, 2, 9, 10, 21. NEGLIGENCE, 18.

1. Owner of land in public way may lawfully plant shade trees within limits of way, if public use is not thereby obstructed or endangered. *Wellman v. Dickey*, 545.

2. Trees so planted are a public benefit and highway surveyors who destroy such trees without reason or necessity, are trespassers, and if act is wanton are liable for exemplary damages. *Id.*

3. Owner of city lots has no right to make subterranean passage from one to another through underlying soil of public street, the fee of which is not in him, in order to mine and remove minerals, even though no injury may result thereby to the street as such. *Zinc Co. v. City of La Salle*, 797.

4. Public easement in public street is public and common right to use same for passage of persons and property, and purposes incidental thereto. *Newell v. Railway Co.*, 431, and note.

5. Owner of soil of street has right to insist that street be used for legitimate purposes and in proper manner; but his power to question the authority for its legitimate use by particular corporation, is limited. *Id.*

6. When street is being used for legitimate purposes, but objection is made to mode of use, question is whether use objected is consistent with the common public use; and is a question of law, the facts being ascertained. *Id.*

7. Doctrines applied in case of use of street by railway company using steam as motor. *Id.*

8. Baltimore and Frederickstown Turnpike Road is entitled to charge and collect toll for ten miles from person passing through the ninth gate on its road westward from Baltimore city—toll for three miles east and seven west of gate—whether he actually starts from Frederick and stops at Middletown, which is only five miles west of gate, or not; and person going east must pay for same ten miles, and not simply for six miles between gates eight and nine. *Turnpike Road v. Routzahn*, 798.

9. Bill for injunction filed by owners of large tract of land, stated that they had laid it out into building lots, and had opened and dedicated streets thereon (which, however, had never been accepted by public authorities), and had filed map thereof in county clerk's office; that complainants had sold some of the lots, and that present owners thereof had admitted easement in adjacent streets; and that complainants annually expended large sums of money for repairing all the

HIGHWAYS ; STREETS.

streets and keeping them in order. *Held*, that complainants could not enjoin hackmen from ordinarily using any of the streets, in carrying their passengers to and from railroad station. *Land Co. v. Cramer*, 215.

HOMESTEAD. See EQUITY, 6. MINES AND MINING, 4.**HUSBAND AND WIFE.** See AGENT, 11. CORPORATION, 38. EVIDENCE, 24. LEADING ARTICLE, p. 692. INSURANCE, 23. PRESUMPTION, 1, 2. TRUST AND TRUSTEE, 9-11.**I. Marriage, Divorce and Alimony.**

1. Where alimony has been granted, in instalments, to divorced wife, and she marries a man able to and who does support her, there is *prima facie* good ground to reduce the alimony. *Olney v. Watts*, 77.

2. Husband and wife separated by mutual consent shortly after marriage and lived apart for sixteen years, the husband allowing wife small sum for support, when he discovered she was living in adultery. *Held*, that husband was not entitled to divorce. *Hawkins v. Hawkins*, 97, and note.

3. A judgment ordered for defendant on an agreed statement of facts which showed that mortgage in suit was given to secure payment of sum of money by husband to his wife, under collusive agreement for obtaining divorce in her favor, is not conclusive against rights of wife, after such divorce has been decreed, to recover alimony from the husband. *Cross v. Cross*, 407.

4. Nor is adultery of the wife, both before and after such divorce, a legal bar to the granting of alimony upon her petition subsequently brought. *Id.*

5. Paper found in possession of or produced by one of parties to alleged marriage purporting to be marriage certificate, is admissible in civil cases other than actions for seduction, without proof of its genuineness, or that it was given by one acting in an official capacity. *Inhabitants of Camden v. Inhabitants of Belgrade*, 612.

6. In proof of disputed marriage in such actions, cohabitation, reputation, the declarations of the parties, written or oral, and their conduct and all other circumstances usually attending the marriage relation, are admissible; and where there is shown to have been cohabitation for some years and children, it is admissible to show what kind of family woman had previously belonged to and what kind of home she had left. *Id.*

7. Courts of other states have no authority to decree divorce between citizens of Maine, and its courts are not bound by findings of courts of other states upon jurisdictional question of residence of parties. *Gregory v. Gregory*, 612.

8. Adultery by libellant at any time before final decree constitutes perfect bar to divorce, and if after answer filed, defendant may recriminate by supplemental answer. *Fuller v. Fuller*, 612.

9. A. and P. were married in West Virginia, at their domicile, where A. retained his domicile, but P. went to Tennessee, where, in *ex parte* proceedings, she obtained a divorce *a vinculo* from A., but, as there was no personal service upon A., her application for alimony was dismissed without prejudice. She then brought suit in Ohio for alimony alone, and to reach certain property there belonging to A.; she obtained service upon A., who also appeared and filed pleadings, and on trial court found sufficient cause, and allowed her alimony. *Held*, that course of proceedings was lawful. *Woods v. Waddle*, 742.

II. Separate Estate. See *infra*, 16.

10. Husband is not liable for separate property of wife received by him with her knowledge and acquiescence, and without any express promise to repay her. *Machine Co. v. Radcliff*, 77.

11. The statute prohibiting conveyances by the wife without joinder of her husband of such real estate as has been conveyed to her by her husband, does not exempt such real estate from attachment and levy by her creditors. *Vergil v. Stetson*, 146.

III. Torts, Contracts, Conveyances, &c.

12. Funeral expenses of wife are to be paid by husband. *Staple's Appeal*, 77.

13. Private examination of wife before proper officer is indispensable requisite to conveyance of her real estate. *Carn v. Haisley*, 347.

HUSBAND AND WIFE.

14. Plaintiff cannot avail himself of title acquired or which did not subsist in him until after he commenced suit. *Carn v. Haisley*, 347.

15. The promise of a married woman, made when under common-law disability of coverture, does not furnish consideration upon which her promise to pay the same debt, made after the disability is removed, can be sustained. *Kent v. Rand*, 784.

16. Married woman was attached as garnishee before a magistrate. She failed to appear, and judgment was rendered against her for debt, interest and costs. Between time attachment was laid and judgment rendered, husband of garnishee died. On bill filed to restrain execution, *held*, that, in absence of clear proof of fraud or surprise, unmingled with negligence or fault on her part, she had no standing. *Ahern v. Fink*, 347.

17. A married woman, in Kansas, can sue in her own name for alienation of husband's affections, &c. *Mehrhoff v. Mehrhoff*, 194.

18. In such an action, a complaint alleging that defendants began systematically to poison and prejudice husband's mind by telling him false stories about his wife, the plaintiff, and charging her with unwillingness and inability to do housework, and by treating her with gross disrespect in his presence, and, finally, by falsely and maliciously charging her, in his presence, with adultery, is not sufficient, except as to allegation of charge of adultery, and as to that it should be made more specific as to words, and time and place they were spoken. *Id.*

INFANT. See COMMON CARRIER, 9. CRIMINAL LAW, 19, 20. MASTER AND SERVANT, 17. NEGLIGENCE, 16. PARENT AND CHILD

1. Decree of probate court in settlement of administration account concludes an infant whose guardian has notice and is present. *Simmons v. Goodell*, 407.

2. If appeal is not taken, decree has same effect as judgment of court of law. *Id.*

3. Errors in decree can be corrected only on appeal; errors in record of decree may be corrected any time. *Id.*

4. Where infant sold his claim against his guardian, for present consideration and promised to give receipt when he became of age, it is an executed contract. *State v. Rosseau*, 476.

5. Executory contract of infant requires express confirmation or new promise after coming of age; but ratification of executed contract may be inferred, and any acknowledgment of liability, or holding and treating property as his own, will amount to such ratification. *Id.*

6. A., an infant, had parents living, but who did nothing for his support, he being in almshouse, and sickly; B. was told by A.'s father, that A. would, at father's death, be worth \$10,000, and was requested by father to care for A., and B. after satisfying himself of truth of these statements, and relying upon credit of A.'s estate, removed A. from almshouse, and undertook and continued maintenance of A., for number of years. *Held*, that A. was liable for the necessities furnished him. *Trainer v. Trumbull*, 695, and note.

INJUNCTION. See ARBITRATION, 1, 2. BANKRUPTCY, 6. COPYRIGHT, 3. CORPORATION, 20-21. COSTS, 1. COVENANT, 3. EQUITY, 4, 13. HIGHWAYS, &c., 9. HUSBAND AND WIFE, 16. MORTGAGE, 15, 16. MUNICIPAL CORPORATION, 13. PARTNERSHIP, 11. RAILROAD, 5. TRADEMARK, 3. WATERS AND WATER-COURSES, 2.

1. Will not issue to restrain libel calculated to injure property. *Kidd v. Smith*, 730.

2. Under injunction bond, defendant is entitled to recover reasonable counsel fees necessary to get rid of injunction, but not compensation for his time and service, or for his mental strain and anxiety. *Cook v. Chapman*, 612.

3. A bill in equity and injunction is not proper remedy where municipal corporation has been organized, even though it is alleged that such organization was illegal and not in conformity to law. *McDonald v. Rehner*, 546.

4. When franchise or office is usurped, injunction will not lie to prevent such usurpation, even though respondents have not entered on duties of their office. The remedy is at law, by *quo warranto* to be invoked after entry into, or exercise of authority, by virtue of their election or appointment. *Id.*

INJUNCTION.

5. Injunction undertaking was conditioned for payment of damages "If it be finally decided that the injunction ought not to have been granted." On motion on part of defendants, and because co-defendants had not been served, court dismissed action without prejudice and injunction was dissolved, and costs paid by plaintiff. *Held*, that there was no breach of condition of undertaking. *Krug v. Bishop*, 476.

6. Complainant's bill alleged that he was part owner of a pilot boat, duly licensed, &c.; that defendants had combined to destroy his business and property, by divers publications and suits at law, impugning his right to use his vessel as pilot boat. Bill also alleged that defendants had bound themselves not to serve as branch pilots in certain district, with those outside the confederation, and that these acts would injure plaintiff's business. *Held*, that plaintiff had full remedy at law. *Francis v. Flynn*, 546.

INNKEEPER.

1. Receiving piano in character of innkeeper, and as property of guest, is entitled to lien for board and lodging, although piano is property of third person. *Cook v. Prentice*, 700, and note.

2. W., keeper of gambling-house, closed his business at 2 A. M., and visited an inn for purpose of depositing his money for safe keeping; he found inn in charge of night clerk; inquired for and was told he could have lodgings for the night; stated that he did not desire to go to his room then, but wished to leave some money with clerk, and would return in about half an hour. Clerk said he would reserve a good room for him. He did not enter his name. It was not upon any book of inn. No room was assigned to him. He left the money with clerk, received check for it, and departed. He returned in about three hours to have room assigned and retire. Clerk had absconded with money. *Held*, W. was not a guest at time of deposit with clerk, and innkeeper was not liable. *Arcade Hotel v. Wiatt*, 211.

INSANITY. See CRIMINAL LAW, 3. LUNATIC. WILL, 16.

INSOLVENCY. See ASSIGNMENT, 6. CONFLICT OF LAWS, 7.

Insolvent law of Maryland does not operate to discharge contract with citizen of another state. *Glenn v. Clabaugh*, 737.

INSURANCE. See COMMON CARRIER, 20, 21. CONTRACT, 18. JUDICIAL SALE, 2.

I. Generally.

1. The surplus of earnings accumulated from operations of stock department of insurance company, run upon stock and mutual principles, the business of the two departments being entirely distinct and conducted separately, none of the earnings of stock department being paid to holders of mutual policies, upon winding up of stock department should be distributed among shareholders of funds of that department. *Ins. Co. v. Brown*, 793.

II. Marine.

2. In ordinary marine policy insurance against fire does not cover case of spontaneous combustion caused by inherent infirmity of goods insured. *Ins. Co. v. Adler*, 793.

3. In marine insurance, if article is injured by reason of its own inherent tendencies, and these tendencies are not called into activity by any perils insured against, insurer is not liable. *Ins. Co. v. Adler*, 468.

4. *Quære*, whether same rule applies in fire insurance. *Id.*

5. Action may be maintained for *pro rata* premium under continuation clause of marine policy, when vessel was at sea, at expiration of term of insurance, though a previous action had been brought on premium note and judgment therefor had been rendered. *Ins. Co. of N. A. v. Rogers*, 675.

6. In action for premium due on marine policy, which was in name of part owner for benefit of whom it may concern, defendant presented evidence of other insurance, which made an over insurance on his part of vessel, and claimed to be liable, if at all, for only a ratable proportion of the premium. *Held*, that if this proposition is sound, burden is on defendant to show that policies were simultaneous and not intended to cover interests of other owners. *Id.*

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7. THE EFFECT OF A RECENT DECISION ON THE LAW OF MARINE INSURANCE, 365.

III. *Life and Accident.*

8. Where insurance company contracted in writing to pay sum of money to personal representative of insured, it cannot be shown by parol that children were intended. *Elliott v. Whedbee*, 348.

9. Where by-law of company allowed holder of policy to designate beneficiaries by endorsement signed and witnessed, *held*, that endorsement without signing was insufficient. *Id.*

10. Where policy is payable to personal representative of deceased, his administrator may maintain action for the money against next of kin who received it; but if estate is solvent they can retain their distributive shares. *Id.*

11. Duty of insured to keep alive his policy, assigned as collateral security to insuring company, just as much as if it had been assigned to any third person. *Grant v. Ins. Co.*, 282.

12. Where company is in habit of notifying insured through its local agent when premiums are due, it is bound to give notice before substituting another mode; but insured must act with reasonable diligence and six months delay to pay premium for want of notice is so unreasonable as to evidence purpose to abandon policy. *Id.*

13. It seems that a certificate for the payment of a premium to one holding a number next to that held by one who dies, and solely because he does die, is in nature of a wager on life of one in whom party benefited has no interest, and is therefore illegal. *The People v. Golden Rule*, 146.

14. When policy is issued and accepted upon express condition that answers and statements of application are warranted true in all respects, and if they are otherwise policy is to be void, an innocent mis-statement in matters material to the risk will render the policy void *ab initio*, though the premium paid may be recovered. *Ins. Co. v. Pyle*, 212.

15. While powers of insurance agent are *prima facie* co-extensive with business entrusted to his care, yet company may limit authority of its agents and thus bind all dealing with them with knowledge of limitation. *Ins. Co. v. Fletcher*, 407.

16. Application for policy contained provision that no statements or representations made, or information given to person soliciting or taking application for policy, should be binding on company or in any manner affect its rights unless reduced to writing and presented at home office in the application. *Held*, that such a stipulation is binding on the parties. *Id.*

17. Where by-laws of mutual benefit association provide that upon death of member benefit shall be paid to his direction, member may change beneficiary by surrendering his certificate of membership and procuring new one payable to person therein named. *Barton v. Provident Association*, 476.

18. Certificate of membership in mutual relief association may be reformed after death of member by inserting name of beneficiary, when it appears that secretary of association and assured both understood at time of application that proposed name should be entered upon record without further direction. *Scott v. Provident Association*, 477.

19. Where one whose judgment and will are overthrown by insanity takes his life by hanging, his act is not "suicide," as that word is used in accident policies, nor his injuries "self-inflicted," or his death "caused wholly or in part by infirmity or disease," but by injuries "effected through external, accidental and violent means." *Crandall v. Acc. Ins. Co. of N. A.*, 373, *und note*.

20. Where the last of several successive causes has produced an effect, the law will not regard the cause of that cause. *Id.*

21. Where an application for insurance differs from the policy issued thereon, it is not considered a part thereof, and admissions by insured in application as to extent of insurance do not limit insurers liability. *Id.*

22. By terms of policy insurance money was payable to assured, his executors, &c., for sole use and benefit of his four children therein named. *Held*, that insurance was payable not to children but to his legal representative, who would thereupon become trustee for children; and that company, before pay-

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ment to administrator, was not liable in trustee process at suit of creditor of one of children. *Stowe v. Phinney*, 613.

23. Policy was issued on husband's life in favor of wife, and she paid the premiums until her death, when by arrangement between company and husband the policy was allowed to lapse, and new policy was issued in favor of husband, of which old policy was part of consideration. *Held*, on interpleader between administrators of estates of husband and wife that insurance money should be divided in proportion of premiums paid by their respective estates. *Ins. Co. v. Haley*, 613.

24. A mutual beneficial association gave a certificate of membership to a member in sum of \$5000, whereby it promised upon proof of his death, that an assessment should be levied upon surviving members to the amount of the certificate which it would pay to his devisees or heirs. It was *held*, that a court of chancery had jurisdiction of a bill brought by heirs of the deceased member to enforce payment of the certificate, by compelling a specific performance of the contract. *Benefit Association v. Sears*, 147.

25. C. obtained certificate of life insurance from the United Order of the Golden Cross which provided that sum insured should be paid H. at C.'s death, which was done. *Held*, in action by C.'s executor against H. evidence was admissible to prove defendant promised C. that, after deducting from insurance money whatever C. owed him, he would pay balance to C.'s heirs. *Held, further*, that C.'s executor was proper party to bring suit on such promise. *Catland's Executors v. Hoyt*, 793.

26. Where, by terms of contract of life insurance, beneficiary named in policy, is entitled to participate in profits, a portion of which is to be applied each year in reduction of premiums and it has been custom of company to give notice of amount of premium and dividend and balance to be paid in cash, and company neglects to give such notice, knowing residence of beneficiary, and by reason thereof a premium is not paid at time specified in policy, company cannot set up such failure to pay as defence to recovery on policy, though by its terms same is forfeited on failure to pay premium on any of dates stipulated therein. *Ins. Co. v. Smith*, 407.

27. In such case where company has uniformly sent notices to insured (husband of beneficiary) and he has paid premiums, law will treat him in making such payments as agent for wife; but where husband wrote company shortly after notice sent, that he and wife had separated and that she had commenced proceedings against him for alimony and that he desired to have policy changed and made payable to his estate, company is not justified in treating him as her agent, either for purpose of surrendering policy or of receiving notice for her. *Id.*

28. Where in such case company repudiates contract and by its course of conduct clearly indicates that tender of premium after death of insured, if made would not be accepted, a failure to make such tender will not bar recovery on policy. *Id.*

IV. Fire.

29. Whether agent used reasonable diligence in cancelling a policy after being instructed so to do by company is a mixed question of law and fact; and where it appears that agent could have notified insurer of company's refusal to take the risk in half an hour and did not do so for several days, it will not be held that court before whom case was tried without a jury, erred in finding that agent was negligent; and an offer by agent to show custom of insurance agent to notify insured in such cases at their own convenience, and that they are given from five to ten days to cancel a policy, is inadmissible. *Ins. Co. v. Frissell*, 794.

30. In such case, the company having paid policy after proof of loss, may bring action against agent for amount so paid, immediately after such payment although the sixty days which it reserves as a time within which to pay the loss has not expired. *Id.*

31. Plaintiff signed application written by an "insurance broker" in office of defendant's agent. Defendant having returned application for further information to its agent, he turned it over to the broker aforesaid, requesting him

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"to go and get reply." The broker, though correctly informed by the assured, wrote false statement in application. This broker was not recognised as agent by the company or its agent. *Held*, that the writing of the false statements, in legal significance, was the act of the agent; that the knowledge of the broker was the knowledge of the company, and it was estopped from claiming a forfeiture; that defendant could not avoid its responsibility by repudiating acts of its agents, though done in part by a person employed by him. *Mullin v. Ins. Co.*, 675.

32. Plaintiff, in preparing proofs of loss, could properly employ his wife to make inventory of household goods destroyed; but when he made affidavit to same, without scrutiny or knowing it was correct, and it contained false statements, calculated and intended to work a fraud, he thereby made the fraud his own. And it was error for the court, on request, to refuse to so charge the jury and to put it on the theory of honest intention. *Id.*

33. A party applied to an insurance agent to procure insurance on certain property, leaving him to select the company. He forwarded application to certain insurance brokers in Chicago, who procured the policy in a company with which they had considerable dealing, and sent same to insured through first-named agents, whereupon he sent premium to Chicago agents, who failed to pay over same to insurance company. Policy contained usual clause that it should not be binding until actual payment of premium. *Held*, that liability of insurance company depended upon whether Chicago agents were its agents, and correspondence between them was proper evidence for purpose of showing their previous relations and methods of business, and as tending to show that the Chicago firm were, in fact, agents of the company and authorized to receive payment of the premium. *Sun Mut. Ins. Co. v. Saginaw Barrel Co.*, 147.

INTEREST. See **MORTGAGE**, 21. **USURY.**

INTOXICATING LIQUORS. See **CONSTITUTIONAL LAW**, 3, 5, 11. **CRIMINAL LAW**, II. **MUNICIPAL CORPORATION**, 16. **STATUTE**, 2.

A., duly licensed in Providence, sent liquors in bulk to B., in Hopkinton, where no licenses were granted, with agreement that they should remain A.'s property, but that B. might draw ten gallons at a time, as he wished, paying therefor when drawn. *Held*, that A. was illegally keeping for sale and selling liquor in Hopkinton. *In re Liquors*, 348.

JOINT STOCK COMPANY. See **RECEIVER**, 7.

JUDGMENT. See **BANKRUPTCY**, 5. **CONSTITUTIONAL LAW**, 40, 41. **CORPORATION**, 1. **FORMER RECOVERY**, 9. **MORTGAGE**, 1, 9. **NOTICE**, 1. **OFFICER**, 5. **RECEIVER**, 5, 6.

1. When jurisdiction over a case, of court of limited jurisdiction, depends on some fact which can be decided without deciding case on its merits, the jurisdiction may be questioned and disproved collaterally, although the jurisdictional fact is averred of record and has been on evidence actually found by court. *Bank v. Wilcox*, 613.

2. When suit is brought against an administrator, and judgment rendered, adding only after his name "administrator of estate of J. S. Adams," and whole record shows that suit was based on claim against the deceased person, court will, on motion, at subsequent term, permit the record to be amended so as to show that defendant was sued, and judgment rendered against him as administrator. *Adams v. Requa*, 348.

JUDICIAL SALE. See **DECEDENTS' ESTATES**, 3. **EXECUTORS AND ADMINISTRATORS**, 6, 16. **MORTGAGE**, 19.

1. Where parties take possession of property purchased by them at sheriff's sale, under circumstances that induced court of equity from considerations of public policy, to set sale aside, sale cannot be said to have been void, but relation of purchaser to execution creditor is like that of trustee to *cestui que trust*. *Paper Co. v. Langley*, 212.

2. Where *quasi* trustee has insured property of *cestui que trust*, for which, being burned, he receives insurance money, he is accountable therefor, less pay-

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ments in affecting and collecting insurance. *Paper Company v. Langley*, 212.

3. The conditions of a judicial sale were that purchaser should pay ten per cent. cash and balance by certain day ; that, on non-compliance with conditions, property would be resold and first purchaser held liable for all loss incurred thereby, but not to receive benefit of any advance. A. purchased a lot, paid ten per cent. of his bid, and failed to pay remainder. The lot was resold for a sum in excess of A.'s bid sufficient to pay interest thereon and expense of second sale. *Held*, that A. was entitled to be repaid the ten per cent. *The Chancellor v. Gummere*, 147.

JURISDICTION. See **CONFLICT OF LAWS**, 9. **CONSTITUTIONAL LAW**, 46. **ERRORS AND APPEALS**, 2, 9. **JUDGMENT**, 1. **UNITED STATES COURTS**, 2-5.

JUROR AND JURY. See **WITNESS**.

LANDLORD AND TENANT. See **ACTION**, 3, 7. **COVENANT**, 1. **NEGLIGENCE**, 1. **REMOVAL OF CAUSES**, 8.

1. Tenant may remove buildings erected by him for better enjoyment of leasehold, during his rightful continuance in possession, if the removal can be accomplished without permanent injury to freehold. *Hedderick v. Smith*, 21, *and note*.

2. If tenant takes new lease without reserving right to remove buildings erected during previous term, he cannot remove same at expiration of new term ; otherwise in case of mere extension of old lease upon same terms. *Id.*

3. A. having rented his land for a certain portion of the crop to be raised thereon, had no right to enter upon it, against the will of his tenant, even for the purpose of gathering the crop which was in danger of perishing. The contract was not a mere cropping agreement ; the title to the crop was in the tenant, and the landlord had merely a lien thereon. *Wadley v. Williams*, 147.

LARCENY. See **CRIMINAL LAW**, III.

LEASE. See **RAILROAD**, 13.

LEGACY. See **WILL**, 3-5, 9-11.

The entire personal estate of decedent ought to be returned in the inventory to Orphans' Court ; but the title of a legatee to property specifically bequeathed him does not depend on its being included in the inventory returned by executors, nor, necessarily, upon a decree of distribution by the Orphans' Court. *Matthews v. Turner*, 282.

LIBEL. See **SLANDER AND LIBEL**.

LICENSE.

1. One who travels through country, carrying all necessary tools for putting up lightning-rods, charging so much for rods and so much for putting them up (never having sold any without putting them up) and soliciting patronage from house to house, is not bound to take out county license as pedlar, being rather a skilled mechanic than pedlar in sense of the law. *Ezelt v. Tharsher*, 546.

2. Where license is a power coupled with an interest of permanent character, it is irrevocable ; and if interest be in land and contract by parol, court of equity will hold contract binding, where licensee has incurred trouble and expense in carrying it out, notwithstanding Statute of Frauds. *Meetze v. Rd.*, 212.

3. Doctrine applied where railroad company, for certain privileges, was permitted by parol to construct upon plaintiff's land a dam, canal and water-wheel, for purpose of keeping its tank supplied with water. In such a case, upon withdrawal of such privilege by railroad company, plaintiff could not sue for use and occupation but only for damages for breach of special contract. *Id.*

LIEN. See **BANK**, 14, 15. **EXEMPTION**, 7. **INNKEEPER**, 1. **MORTGAGE**, 3. **VENDOR AND VENDEE**, 3, 4.

1. As a general rule, the equitable lien of the grantor of real estate for the price thereof, is not assignable, although there may be exceptions to this rule in
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LIEN.

favor of persons who merely stand as representatives of grantor. *Hammond v. Peyton*, 390, and note.

2. The lien itself is not in accordance with the policy of the law, and should be restrained rather than fostered. *Id.*

LIFE TENANT. See **EXECUTORS AND ADMINISTRATORS**, 3, 4. **TRUST AND TRUSTEE**, 3.

1. A conveyance to husband and wife, without words of limitation, render, them tenants by entireties; but such an estate may be limited to a life estates and words clearly expressing an intention to create an estate for their joint lives, and providing that after the termination of such life estate, the land shall be divided among the heirs of the husband and the heirs of the wife, creates a life estate in the husband and wife. *Haddock v. Gray*, 266, and note.

2. Land was conveyed to husband and wife with provision that survivor should hold the same until his or her death and after decease of husband and wife it should be equally divided between the heirs of each. *Held*, that the husband and wife were not tenants by entireties; that they did not take an estate in fee under rule in *Shelley's Case*, but the word "heirs," as used here, means "heirs apparent," and does not designate those who shall take an indefinite succession. *Id.*

LIMITATIONS, STATUTE OF. See **AMENDMENT**, 3. **CORPORATION**, 2, 3. **COVENANT**, 3. **LEADING ARTICLE**, p. 691.

1. Endorsement of payment on note barred by statute is to be regarded as an entry in holder's interest. *Coon's Appeal*, 77.

2. Where in such case, court below found that there was no evidence that such payment was made by maker or with his knowledge: *held*, that court above could not infer such payment from endorsement. *Id.*

3. Benefit of, may be had on general demurrer to petition, though special demurrer is the better practice. *Seymour v. P. C. & St. L. Rd.*, 212.

4. Action against railroad company to recover damages for killing or injuring domestic animal, killed or injured solely by neglect to fence road, as required by law, is founded upon "a liability created by statute, other than forfeiture or penalty" and is barred in six years. *Id.*

5. Acknowledgment of debt made to stranger and not intended to be communicated to creditor, will not remove bar of Statute of Limitations. *Parker v. Remington*, 675.

6. Two breaches were made of a bail bond. The creditor, plaintiff, brought an action of debt, alleging second breach. *Held*, that Statute of Limitations against an action on bond began to run at time of first breach, whether creditor knew of it or not, there being no fraud or concealment to prevent creditor obtaining knowledge of breach. *Pearce v. Curran*, 676.

7. Where principal and sureties gave their joint and several promissory note, upon which, after maturity, the principal debtor made several payments, the legal liability of all parties to note was discharged at expiration of six years from its maturity, and thereafter action could be maintained only on the new promise implied from partial payments, credited in note. *Walters v. Kraft*, 408.

8. But as such subsequent promise constituted a new contract and a new cause of action, no one is liable except him who made it; the liability of sureties was not continued by payments and promises of principal debtor, the relation of agency not existing between them. *Id.*

9. Purchase of intestate's lands at administrator's sale by agent of administrator with his means, who takes deed in his own name, and conveys to wife of administrator, is fraudulent, and though not void, the purchase and deeds may be avoided by one interested in lands. *McGaughey v. Brown*, 546.

10. Courts of equity, in cases of concurrent jurisdiction, consider themselves bound by Statutes of Limitations which govern courts of law in like cases, and this rather in obedience to statute than by analogy. *Id.*

11. Rule that Statute of Limitations will not bar a trust, applies only to express and positive trusts, and not to those where circumstances raise presumption of extinguishment of trust, or where open denial of trust is brought

LIMITATIONS, STATUTE OF.

to knowledge of parties in interest, which requires them to act as on asserted adverse title. *McGaughey v. Brown*, 546.

12. The Statute of Limitations will commence against action for fraud of administrator from time of his discharge by probate court. *Id.*

13. Where the Statute of Limitations was set up as a defence to a contract, and the question was the constitutionality of an act removing the bar, passed after it had become perfect, *held*, that it merely took away a purely arbitrary defence to an action, which fell with the repeal of the law on which it depended, and such a defence is not a right of property protected by 15th Amendment to Constitution of United States. *Campbell v. Holt*, 148.

LIS PENDENS. See **ATTACHMENT**, 13. **RECEIVER**, 6.

To constitute, bill must be actually filed, having special reference to specific property, and subpoena must also be served upon defendant. *Sanders v. McDonald*, 77.

LUNATIC. See **AGENT**, 10.

1. Guardian of, may carry on ward's business. *State v. Jones*, 614.

2. Reasonable compensation only should be allowed for so doing, and the 5 per cent. rule should not always be adopted. *Id.*

3. Annual settlements and orders of approval made thereon by probate court are competent evidence to show that business was carried on under supervision of court, although there was no previous order. *Id.*

4. Such annual settlements are not conclusive, but subject to review at final settlement. *Id.*

5. Sureties in second bond given by such guardian, are not liable for excessive commissions retained by or allowed to such guardian in previous annual settlements under first bond. *Id.*

MALICIOUS PROSECUTION.

1. In an action of malicious prosecution, the burden of proving malice and absence of reasonable and probable cause is on plaintiff. *Abrath v. Northeastern Railway*, 757, and *note*.

2. Per Lord BRAMWELL: An action for malicious prosecution does not lie against a corporation aggregate, such a corporation being incapable of malice or motive. *Id.*

MANDAMUS. See **COMMON CARRIER**, 16.

1. Allegations of return to alternative writ of mandamus, should be stated positively, not upon information and belief. *State v. County Com.*, 349.

2. The rules requiring pleas to be sworn to, does not restrict defendant to pleading matters of defence within his personal knowledge. *Id.*

3. Mandamus will not issue to enable person to effect illegal purpose. *Id.*

4. If alternative writ of mandamus shows *prima facie* case, it is not demurrable. *State v. Mayor of Jacksonville*, 547.

5. Where writ alleges power in municipal body to levy taxes, and such power is limited by statute to certain percentage on value of taxable property, it is not necessary to allege in writ, that power has not been exhausted; that is matter of defence. *Id.*

6. Where levy of taxes is desired by judgment-creditor of municipality, for payment of his claim, whose right is based on ordinary status of judgment-creditor, and power of board of aldermen to make levy, a demand on proper officers for levy to pay judgment, must be made before relief by mandamus can be had. *Id.*

7. Where exercise of a discretion is involved, writ of mandamus will not be allowed against an inferior court or tribunal. So discretion of probate court as to time it will receive probate of will, or which of two papers purporting to be wills of same person, shall be passed on first, will not be interfered with by this writ. *People v. Knickerbocker*, 409.

8. R., resident of Michigan, filed petition in Delaware court, against S., president of D. Company, S. being resident of Delaware, and D. Company being Connecticut corporation, doing business in Delaware. Petition asked for mandamus to compel S. to allow R., who was stockholder of D. Company, to

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inspect and make copies of certain books and papers of D. Company, in possession of S., and which R. desired for use in suit in Michigan, between R. and third person. *Held*, that court had jurisdiction; that corporation was not necessary party, and that mandamus should be granted. *Swift v. State*, 594.

MARRIAGE. See **HUSBAND AND WIFE**, I. **PRESUMPTION**, 1, 2.

MASTER AND SERVANT. See **CRIMINAL LAW**, 2. **INNKEEPER**, 2. **SLANDER AND LIBEL**, 1.

1. City is not liable for injury to laborer employed in constructing a sewer, when caused by negligence of one who had oversight and direction of work. *Conley v. City*, 676.

2. Where master delegates duties which law imposes on him to an agent, he is liable for injury to employee, due to negligence of such agent, whatever his rank. *Copper v. Louisville, &c., Ry.*, 233.

3. A foreman, except when master's duties are delegated to him, is a fellow-servant with those immediately under him, and master is not answerable to them for his negligence. *Id.*

4. One engaged in repairing tunnels on railroad, who is injured while being transported from one point to another on said road, is a fellow-servant of the engineer of train. *Id.*

5. A locomotive engineer and a section-master of track-workers, are not fellow-servants in sense that the company employing them would not be liable to one for damages resulting to him from negligence of other. *Calvo v. Rd.*, 409.

6. Where engine is thrown from track and engineer injured, through negligent violation of company's rules, by a section-master, the company is liable to engineer, the section-master being a representative of company. *Id.*

7. It is duty of master who sets servant to work in place of danger, to give him such notice and instruction as is reasonably required by youth or inexperience, or want of capacity of servant; and this duty is not confined to cases where servant is man of manifest imbecility. *Atkins v. Thread Co.*, 795.

8. To render master liable for injury to employee, caused by defective machinery furnished by former for latter's use, it must appear that master knew, or by exercise of proper diligence, could have known of its unfitness, and that servant did not know or could not reasonably be held to have known of defect. *Hall v. Hall*, 547.

9. Where a master or his representative has expressly promised to repair defect, servant can recover for injury caused thereby within any period which would not preclude rational expectation that promise might be kept, *provided*, that danger which plaintiff apprehended from beginning was not so imminent as to prevent a reasonably prudent man from risking it, upon assurance by proper authority that cause from which peril arose would be removed. *Dist. Columbia v. McElligott*, 409.

10. A roadmaster of a railroad company or conductor of a train are not so far agents of company as to be legally authorized to employ physician to attend employee injured by cars of company, unless they are specifically charged with that duty; but action of general manager ratifying such contract will render corporation liable. *Rd. v. Gray*, 547.

11. Plaintiff, while being driven in hired hack, was injured by its collision with railroad train, the accident being due to concurrent negligence of hackman and engineer, and sued railroad company. *Held*, that unless plaintiff exercised some control over conduct of driver further than to indicate places to which he wished him to drive, and required him to cross track at time injury occurred, negligence of driver was not imputable to him. *Little v. Hackett*, 213.

12. Co-employees, within the meaning of rule exempting master from liability for injuries sustained by one servant through negligence of another, are those whose usual duties bring them into habitual consociation, so that they may exercise a mutual influence upon each other promotive of proper caution. *Rolling Mill v. Johnson*, 148.

13. Where there is no opportunity to take measures to avoid the negligent acts of another without disobedience to the orders of an immediate superior, the doctrine exempting the master can have no application. *Id.*

MASTER AND SERVANT.

14. Master is not bound to fence machine where it is not of peculiarly dangerous character, and is not liable for personal injuries caused by machine to employee, who was obliged to pass it in going to his work, to whom suitable instructions had been given, having reference to his age and capacity, so as to enable him to understand dangers of employment in which he was engaged. Neither is master liable for injuries because machine might have been placed in less dangerous position. Evidence that a gate might have been placed in front of machine is immaterial. *Rock v. Indian Orchard Mills*, 794.

15. Where there was evidence that plaintiff was playing about machine on which he was injured, a statement in judge's charge that if jury found that to be a fact, plaintiff was guilty of contributory negligence, which would prevent him from recovering, is not open to objection. *Id.*

16. It is not charging upon the facts for a judge to state in his charge that a machine on which plaintiff was injured, was not a peculiarly dangerous one, the fact being self apparent. *Id.*

17. Where master employs, to work in dangerous place, servant who, from youth, inexperience, or ignorance, is unable to appreciate the danger, it is duty of master to explain same, and if, without such explanation, servant is set to work and is injured, master is liable, even though danger would have been apparent to person of capacity and knowledge, and immediate cause of injury is negligence of co-employees. *Jones v. Florence Co.*, 580, and note.

18. *Semble*. Duty of guarding against danger resulting from leaving loose stones or ore in roof or sides of mine, is one which employer may reasonably impose on miners themselves, but if neglect of it is brought to knowledge of master, and he takes no steps to remove danger, he is liable to employee, who, without contributory negligence, is injured thereby. *Id.*

MERGER. See **WATERS AND WATER-COURSES**, 9.

MINES AND MINING. See **HIGHWAYS, &c.**, 3.

1. Revised Statutes, U. S., sect. 2322, gives owner of mineral vein or lode not only all covered by surface lines of claim vertically extended, but also right to follow that lode or vein when it passes outside those vertical lines laterally. *Mining Co. v. Cheesman*, 283.

2. Acts of Congress use words vein, lode or ledge as embracing a more or less continuous body of mineral lying within a well-defined boundary of other rock in the mass within which it is found, or it may be said to be a body of mineral or a mineral body of rock within defined boundaries in this general mass. *Id.*

3. A vein is not necessarily straight or of uniform dip, thickness or richness throughout its course; the cleft within which it is found may be narrowed or widened and even closed for a few feet and then found further on, and the mineral deposit may be diminished or even suspended for a short distance, but if found again in the same course with the same mineral within that distance, its identity may be presumed. *Id.*

4. No title from United States to land known at time of sale to be valuable for its minerals of gold, silver, cinnabar or copper, can be obtained under the pre-emption or homestead laws, or the town-site laws, or in any other way than as by the laws especially authorizing the sale of such lands, except in the states of Michigan, Wisconsin, Minnesota, Missouri and Kansas. *Deffebach v. Hawke*, 148.

5. It would seem that there may be an entry of a town site, even though within its limits mineral lands are found, the entry and the patent being inoperative as to all lands known at the time to be valuable for their minerals, or discovered to be such before their occupation and improvement for residence or business, under the town-site title. *Id.*

MINOR. See **DOMICILE. GUARDIAN AND WARD. INFANT. PARENT AND CHILD.**

MISTAKE. See **AMENDMENT**, 2.

MORTGAGE. See **BILLS AND NOTES**, 24. **CONFLICT OF LAWS**, 5. **CORPORA-**

MORTGAGE.

TION, 4. DEBTOR AND CREDITOR, 10. EQUITY, 14-16. EXEMPTION, 5, 15. RECEIVER, 3. USURY, 3.

I. Generally.

1. On bill to foreclose, decree was entered to pay within certain time and in default of such payment, appointing master to sell and deposit proceeds in registry of court. *Held*, that action of debt on judgment would not lie to recover sum mentioned in decree. *Burgess v. Souther*, 615.

2. Foreclosure proceedings in equity are of nature of proceedings *in rem*, and do not ordinarily act *in personam*. *Id.*

3. As against bondholders who presented their coupons at office of company for payment and not for sale, and who had right to assume that they were paid, person who advances money to take them up, under undisclosed agreement with company that coupons shall be delivered to him uncanceled as security for his advances, is not entitled to equal priority of lien. *Cameron v. Tome*, 477.

4. Though usual, it is not necessary that mortgage state amount of debt secured or that it is evidenced by note or other instrument. If it contains general description, sufficient to embrace liability intended to be secured and to put person examining record on inquiry, and direct him to proper source for information of amount of debt, it is sufficiently certain. *Curtis v. Flinn*, 548.

5. Mortgage to secure agreement to support another during life is assignable; and condition may be performed by assignee unless support is required by mortgage to be furnished personally. *Bank v. Holt*, 676.

6. And if assigned, amount agreed upon in good faith between the assignee and mortgagor to be paid for the support, is the sum to be paid by a subsequent mortgagee in redemption and not what a master found was actual cost of supporting, although agreement was made after second mortgage was given, the subsequent mortgagee taking mortgage with knowledge that there was controversy over what was to be paid on first mortgage. *Id.*

7. INCOME BONDS AND MORTGAGES, 553.

II. Of Chattels.

8. Foreclosure without sale is satisfaction only to amount of value of property. *Hazard v. Robinson*, 614.

9. After such foreclosure the bringing suit by mortgagee and obtaining judgment for whole debts presumptively waives foreclosure and leaves mortgage subject to redemption in equity. *Id.*

10. A. mortgaged shares of stock by charter transferable by deed, and then by deed assigned his property for benefit of creditors to B., who conveyed it by deed to C. under same trusts. C. died. *Held*, on bill to redeem, that C.'s personal representative was necessary party to suit. *Id.*

11. Instrument executed by partner, in firm name, and legally binding upon partnership, and entitled to be recorded, may be admitted to record upon acknowledgment by executing partner. *McCoy v. Boley*, 349.

12. Mortgage duly recorded is not void between parties or as to third person, whose claim is not based on valuable consideration, because it permits mortgagor to sell personal property covered by it without accounting to mortgagee for proceeds. *Id.*

13. Sale or mortgage of crop to be planted, as well as one planted, and in process of cultivation, is valid—provided place where crop is to be produced is designated with sufficient certainty. It seems parol evidence is competent to fit description to property. *Rountree v. Britt*, 350.

14. Mortgage conveying "my entire crop of every description" is too vague. *Id.*

15. Mortgagor will be prevented by injunction from impairing or destroying property embraced in mortgage lien. *Logan v. Slade*, 743.

16. When merchant, on day after execution of mortgage on his stock of goods in favor of some of his creditors, disposes of large amount of them to other creditors, in payment of their debts, court can enjoin him from selling said goods otherwise than for cash, and command him to pay proceeds, after deducting expenses of sale, into registry of court, and if remedy by injunction proves

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to be ineffectual, court may appoint receiver to take charge of goods, and dispose of them under its direction. *Logan v. Slade*, 743.

III. *Of Realty.*

17. Dated before, but recorded after deed to mortgagor, is notice to subsequent purchaser. *Semon v. Terhune*, 461.

18. Mortgagor who pays bond after property has been sold under foreclosure and proceeds of land have become primary fund for payment, is entitled to subrogation. *Id.*, and note.

19. Absence of one of the two trustees from foreclosure sale not sufficient, of itself, to cause sale to be set aside, as against former owner of land. *Smith v. Black*, 78.

20. Presumption of payment in favor of mortgagor in possession over twenty years may be rebutted. *Brown v. Hardcastle*, 78.

21. Where bond is given conditioned for payment of sum named, with one per cent. interest thereon, by particular day, creditor is entitled to the legal interest thereafter. *Id.*

22. Mortgage will not sustain recovery in action of ejectment against holder of legal title, nor will deed of conveyance made by master under decree in suit to which person owning legal title at institution of suit was not party. *Berlack v. Halle*, 548.

23. A deed absolute in form, intended, however, to secure payment of money due from maker to grantee, and, upon payment of which, by certain time grantee agreed to reconvey property to grantor, though in equity a mortgage is not one at law; therefore, to make it available against creditors of grantor it need not be recorded as a mortgage, if it be recorded within time prescribed for registration of deeds for conveyance or encumbrance of lands in Ohio. *Kemper v. Campbell*, 409.

24. When surety on mortgage debt pays same to holder and receives note and mortgage, without any assignment or discharge written thereon, he cannot maintain bill in equity against owners of equity of redemption, praying that mortgage "may be decreed to be still subsisting, that he may be subrogated to the rights of the mortgagee therein, and may be empowered to foreclose the same according to law." *Lynn v. Richardson*, 795.

25. A. purchased real estate from B., subject to the payment of a mortgage thereon to C. *Held*, that even though A. had expressly promised B. to pay the mortgage debt, this would not, without the consent of C., convert B. from a principal debtor to a surety; and the relation of principal and surety not existing between A. and B., an extension of the time of payment of the mortgage debt, granted by C. to A., would not discharge B. from his liability to C. *Shepherd v. May*, 149.

26. Mortgage made by B. and wife to secure loan from A. would have been valid, if sealed. C. attached B.'s interest in the realty, whereupon A. filed bill against B., his wife and C., charging accident and mistake as cause of mortgage not being sealed, actual notice of paper on C.'s part, and praying reformation by sealing. C. demurred. Demurrer overruled. *Bullock v. Whipp*, 349.

27. A man cannot allow another to part with money, on faith of conveyance, and then taking advantage of defect known to himself, claim a title better in equity by subsequent conveyance. *Id.*

28. By a well established general rule, the word "heirs," or other appropriate words of perpetuity, in a mortgage or deed, is essential to pass a fee simple estate; but where the language used in a mortgage, and the recitals and conditions thereof, plainly evidence an intention to pass entire estate of mortgagor as security for the debt, and express provisions of the instrument cannot otherwise be carried into effect, it will be construed to pass such estate though no formal words of perpetuity are employed. *Brown v. Bank of Hamilton*, 400.

29. K. executed and delivered to T. three notes, payable to T.'s order, due in one, two and three years, and a mortgage to secure their payment. Before maturity of any of notes, T. endorsed them all, waiving demand and notice, and delivered them to A. with assignment of mortgage. The first note due, not being paid at maturity, was put in judgment against K. as maker, and T. as endorser. K. being insolvent, T. paid the judgment. Subsequently T.

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commenced suit to foreclose mortgage, claiming benefit of that security and a lien prior to lien of A. who held remaining two notes, then past due. A., by answer and cross petition, alleged facts showing T.'s liability as endorser on the two notes, that K. was insolvent, that land would prove insufficient to satisfy whole mortgage debt, claiming priority of lien, praying foreclosure and full relief. Later S., on his motion, became plaintiff and filed supplemental petition, averring purchase from T. and assignment of all his interest in mortgage and suit, and claiming priority of lien. The land was sold and not enough realized to pay whole indebtedness. *Held*, that A. was entitled to payment in full from proceeds before application of money to claim of S. *Anderson v. Sharp*, 410.

MUNICIPAL CORPORATION. See CONSTITUTIONAL LAW, 1, 18-21, 36-7. COSTS, 1. DAMAGES, 3-5. HIGHWAYS, &c., 3-7. INJUNCTION, 3. MANDAMUS, 5, 6. MASTER AND SERVANT, 1. NEGLIGENCE, 3. OFFICER, 3-6. STATUTE, 2. TAX AND TAXATION, 9, 10.

I. Generally.

1. It is duty of a city to keep its streets in a reasonably safe condition, for neglect of which it is liable. *Bellamy v. City*, 284.

2. If defect causing injury has existed for some time, the city is chargeable with notice of it. If the city could have ascertained the defect, its failure to do so is negligence, and a charge that the defect must be open and notorious is error. *Id.*

3. In authorizing city council of Baltimore to "settle their rules of procedure," the legislature did not confer power to declare what number of members should constitute a quorum. *Heiskell v. The Mayor, &c.*, 792.

4. In a municipal corporation, consisting of a definite number, in the absence of any legislation on the subject, a majority of the members constitutes a quorum. *Id.*

5. A mere majority of the members elected being present, the acts of city council of Baltimore are valid, notwithstanding the existence of a rule adopted by the council, that two-thirds of members elected shall be necessary to constitute a quorum. *Id.*

6. A municipal corporation cannot, by a rule made by itself, increase or diminish its powers. *Id.*

7. Where duties delegated to officers elected by public corporations, are political or governmental, the relation of principal and agent does not exist, and the maxim *respondet superior* does not govern. *Summers v. Board*, 284.

8. Counties are not liable for injuries caused by negligence of commissioners in selection of unskilful physician for care of poor. *Id.*

9. Though city of Atlanta, Ga., by its charter, has right to establish a system of grading and drainage, yet the work must be done so as not to prove a nuisance to citizens, or municipality will be liable for damages. *Smith v. City of Atlanta*, 283.

10. If a sewer becomes a nuisance, and the city, having alone power to abate it, fails to do so, it may be said to keep it up, and thereby becomes liable as for maintenance of a continuing nuisance. *Id.*

11. If bill in chancery be brought in name of town without authority of electors given at town meeting, court may dismiss same on motion of defendants or on its own motion. *Kankakee v. Kankakee Rd.*, 615.

12. Under Illinois system of township organization there is no officer or board representing corporate authority of town; the electors through town meetings alone do so. *Id.*

13. It is probable that in extreme cases of threatened invasion or destruction of property rights of town, any taxpayer may prevent such wrong by injunction. *Id.*

14. The fact that city has already exhausted its constitutional power to incur debt cannot be shown to defeat proceeding by it to improve street through special assessment in part and partly by general taxation. That question cannot arise until city seeks to borrow money or incur an indebtedness in that regard. *Ry. v. City*, 410.

15. A city is not liable for acts of officers of its fire department, unless made so by statute or act complained of was expressly ordered by city government;

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they are public officers and not servants of municipality. *Burrill v. City of Augusta*, 548.

16. Cannot make its want of legal authority to engage in particular business (e. g., distillation and sale of spirits), a shelter from the taxation on such business ; nor escape taxes due on its property, whether acquired legally or illegally. *City v. Hollister*, 477.

17. Judgment and discretion of, in selecting plan of drainage is not subject to revision in private action for not sufficiently draining particular lot of land : but for negligence in construction and repair of sewers municipality is responsible to person whose property is thereby injured. *Johnson v. District*, 477.

18. Cities and villages incorporated under the general Incorporation Act of Ill. giving power "to regulate the police of the city or village, and pass and enforce all necessary police regulations," may pass an ordinance prohibiting persons from keeping open stores for sale of goods on Sunday, and provide penalty for violation of same. Such an ordinance is not inconsistent with section 261 of Criminal Code, and the police regulations of a village may differ from those of the state on the same subject, if not inconsistent therewith. *McPherson v. Village of Chebause*, 149.

19. City council, under Illinois Incorporation Act, may grant to individuals or private corporation right to lay railroad tracks in streets, connecting with public railway tracks previously laid, and extending to manufacturing establishments, &c., of those laying the tracks, but in such case tracks so laid become, in legal contemplation, part of railway with which they connect, and are open to public, and subject to public control in all respects as other railway tracks. All railroad companies are required by law to permit such connections. *Chicago Co. v. Garrity*, 609.

20. No corporation or individual can acquire exclusive right to use of city streets. *Id.*

21. Where, by its charter, a city had power to pass ordinances to remove nuisances from streets, and for preservation of peace and good order, and in pursuance thereof had prohibited "any sport, play or exercise that might produce bodily injury or endanger property on any street, square or alley, within the city limits," in an action against the municipality for injuries to plaintiff caused by his being knocked down, while crossing a street, by a sled on which boys were coasting, it was *held*, 1st, that defendant was under obligation to exercise for public good the powers conferred on it by its charter, and that this duty was not discharged by merely passing ordinances ; a vigorous effort must be made to enforce them. 2d. If defendant made vigorous efforts to prevent nuisances complained of by enforcing its ordinance on the subject, it was relieved from responsibility. 3d. Whether such efforts had been made was a question for the jury. *Taylor v. Mayor, &c.*, 284.

II. Bonds of.

22. A county court was authorized to issue bonds for a subscription to such amount of stock of railroad as should be proposed by certain commissioners and approved by majority of voters of the county. *Held*, that bonds issued in excess of this amount were void, and that certificate of judge of county court on back of each bond that it was issued as authorized by statute, cannot estop county to deny that the particular bond is void, because county court, at time of its issue, had exhausted power conferred by act of legislature and vote of people ; nor can payment of interest on all bonds ratify bonds issued beyond lawful limit, as county cannot ratify what it could not have authorized. *County v. Davies*, 411.

23. Where legislature dissolves municipal corporation, and incorporates substantially the same people as municipal body under new name, for same general purpose, and great mass of taxable property of old corporation is included within limits of new, and property of old corporation used for public purposes, is transferred without consideration to new corporation for same public uses, the latter, notwithstanding great reduction of its corporate limits, is successor in law, of former, and liable for its debts. *Mobile v. Watson*, 213.

NEGLIGENCE. See **BAILMENT**, 4, 5. **BANK**, 2, 7-9. **COMMON CARRIER**, 2, 5, 9, 12, 19, 20. **CORPORATION**, 4, 5. **DAMAGES**, 3-5. **FRAUD**, 2. **INSURANCE**, 30. **MASTER AND SERVANT**, 2-6, 8, 11-15, 17, 18. **MUNICIPAL CORPORATION**, 1, 2, 15, 17, 21. **RAILROAD**, 10-12. **TELEGRAPH**, 5-7. **WATERS AND WATER-COURSES**, 1.

1. Tenant who erects insecure fence is liable for injuries to passer-by occasioned by fall of fence after tenant had surrendered premises. *Hussey v. Ryan*, 477.

2. When a person voluntarily walks along railroad track in public thoroughfare, which he knew was used as a switch-yard on which locomotives were passing night and day, where walking on either side of track was as good as on track, and is killed by passing train, his representative cannot recover. *Louisville Rd. v. Yniestra*, 350.

3. It is settled law in Maine, that in an action against a town to recover damages for death of person alleged to have been caused by negligence of town in not keeping highway in repair, burden of proof is on plaintiff to show due care on part of deceased. *Merrill v. Inhabitants of North Yarmouth*, 676.

4. A person undertook to drive over a road across which was a flowing stream of water thirty yards wide, and in some places three feet deep, with swift current, on which were floating large blocks of ice. In some way he and his horse got out of the road, were precipitated into deeper channel of river below and drowned. *Held*, that one who knowingly and unnecessarily exposes himself to such perils, cannot be regarded as in the exercise of due care. *Id.*

5. In action for personal injuries sustained on leaving rear car of train at station, evidence that others had previously been directed to take that car, and on alighting from it as plaintiff did, had been injured, is competent to show negligence on part of defendant in not providing suitable stopping place, and that plaintiff was not negligent in getting off train. *Bullard v. Rd.*, 795.

6. Action to recover damages for personal injuries to plaintiff's intestate, where evidence showed that deceased was burned by a quantity of starch which escaped from a boiler, but failed to disclose that boilers were improperly constructed or out of repair, and that accident was not due to carelessness of deceased, cannot be maintained. *Blanchette, Adm'r., v. Border City Mfg. Co.* 795.

7. One who makes excavation on his lot in such manner as to cause a pit-fall upon adjoining lot is liable, in absence of contributory negligence, to one who resides on latter, for death of his child, caused by falling into such pit. *Muy-hew v. Burns*, 284.

8. But in such case, evidence that plaintiff's poverty prevented his employing any one besides his housekeeper to take care of his children, is inadmissible in question of contributory negligence; and if he knew of the danger and could by reasonable exertion have averted it, his failure to do so will prevent a recovery. *Id.*

9. Where fire is negligently thrown from mill smoke-stack and carried to building outside of the mill property, and thence to another building of third party, and thence to other property that is damaged by fire, whether such negligence is proximate cause of damage is for the jury. *Adams v. Young*, 561, and *note*.

10. Defendant dug pit under cotton gin for cotton press, near public highway, and left it unenclosed, corn and cotton seed being scattered about it. Plaintiff's cow fell into pit and was killed. *Held*, that defendant was guilty of negligence and must pay value of cow, and that plaintiff was not guilty of contributory negligence in turning cow out on commons remote from gin. *Jones v. Nichols*, 549.

11. While railroad company cannot be said to owe no duty to one who unlawfully intrudes upon its engines or cars, it does not owe him same duty it owes to passengers or employees. *Darwin v. Rd.*, 411.

12. Where trespasser gets without authority upon most dangerous place on railroad engine and is killed, he is guilty of contributory negligence and no recovery of damages for his death can be had against company, even if it had been guilty of negligence, and engineer knowing the person was in place of danger did not warn him off. In case of passenger, rule would be different. *Id.*

NEGLIGENCE.

13. If plaintiff in case of personal injury can show negligence on part of defendant without at same time showing contributory negligence on his own part, then such contributory negligence is matter of defence and burden of proof is on defendant. *Texas, &c., Rd. v. Orr*, 548.

14. Railroad companies, as a rule are bound to keep in safe condition all portions of station ground and approaches to platform where passengers would be likely to go, especially those places where by custom of company they do go. *Id.*

15. That injured party does not adopt best remedies or follow implicitly physician's directions will not excuse wrongful injury which directly produces disease from which death ensues. It is for jury to pass on reasonableness of decedent's conduct and whether death was caused by the injury. *Id.*

16. Young child strayed from its home to railroad track, crossed track and fell into adjoining trench. Track was not fenced on trench side. *Held*, that company was as to plaintiff child under no obligation so to fence its tracks, that plaintiff child could not get from them on to adjoining land. *Morrissey v. Rd.*, 350.

17. On demurrer to declaration against corporation, its charter is not before the court. *Id.*

18. Where a person has so made the way leading to building on his premises, as to invite people to pass along the way to such building, he is bound to keep the way clear of dangers ; and it is not necessary in such case that person using way should be traveller on highway. *Croghan v. Schiele*, 743.

19. Where fire is negligently thrown from a mill smoke-stack and carried to building outside mill property, and thence to third party's building, and thence to building damaged, whether such negligence is proximate cause is for the jury under court's instructions. *Adams v. Young*, 213.

20. In action against mill owner for damages to property caused by fire so thrown and carried to property by gale of wind blowing at time in direction of property ; where the conditions continue the same as when negligent act was done, it is no defence that fire first burned intervening building and was thence communicated by sparks and cinders in some manner to building in question ; though buildings were 200 feet apart. *Id.*

21. In order to support a recovery against a railroad corporation on account of an injury or death, caused by a collision with its train at a crossing, whether the action be in form civil or criminal, it must appear affirmatively : 1. That the defendant corporation was guilty of negligence. 2. That its negligence was the cause of the accident. 3. That the injured party was in the exercise of due care and diligence at the time of the injury, or, at least, that the want of such care on his part in no way contributed to produce it. *State v. Rd.*, 150.

22. It is negligence to attempt to cross the track of a railroad without looking and listening so far as there is opportunity to do so. *Id.*

23. Person waiting at railroad station for passage on train soon to depart, who is invited by ticket agent to sit in empty car, standing on side track, while station room was being cleaned, is entitled to same protection from company while in car as if in waiting room ; in either place he is a passenger. *Shannon v. Rd.*, 549.

24. For passenger to jump off or on moving train is *prima facie* negligence ; whether he had reasonable excuse for so doing is usually question for jury, though extreme case either way may be determined by court. Fear of personal danger is not only excuse that will exonerate one in jumping from moving train ; in some cases he may be justified in so doing to save himself from serious inconvenience, but all depends on speed of train and attendant circumstances. *Id.*

25. Where there is no evidence of want of capacity or discretion in a minor suing a railroad company for personal injury, and he is present at trial and it appears his parents permitted him to go unattended to school in a large city a considerable distance from his home, it was held error to instruct the jury that if they believed from the evidence that the plaintiff, at the time and place of the injury, was of such tender years and was so immature, that the requisite capa-

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city to exercise proper care was wanting, then the law would not impute negligence to him. *Rd. v. Eininger*, 149.

26. In a suit by plaintiff against a railway company to recover for an injury received from a passing train at a public street crossing—not in attempting to cross the track along the street, but while unlawfully walking along the track as a footway—it was held error to instruct the jury that if the injury happened because of there being no flagman at the railroad crossing, contrary to a city ordinance, then the plaintiff was entitled to recover. Under the facts the company owed no duty to the plaintiff in respect to a flagman. *Id.*

27. FELLOW-SERVANTS, 481.

28. NEGLIGENCE IN IMMINENT PERIL, 617.

NEGOTIABLE INSTRUMENT. See **BILLS AND NOTES.****NONSUIT.**

Before opening his case plaintiff may become nonsuit, as a matter of right; after opening and before verdict, in the discretion of the court. *Washburn v. Allen*, 78.

NOTICE. See **ATTACHMENT**, 12, 13. **BANK**, 11, 22. **BILLS AND NOTES**, 23–25. **EVIDENCE**, 22. **MORTGAGE**, 4, 17, 26. **MUNICIPAL CORPORATION**, 2. **SALE**, 8.

1. Without proof of, unregistered title is void against subsequent judgment-creditor of grantor. *Executors of Hodge v. Amerman*, 214.

2. Burden of proving notice in such case is on holder of unregistered title. *Id.*

3. Constructive notice of unregistered is as effectual as actual. Possession (which may exist without actual residence), if open, notorious, exclusive and unequivocal, will constitute notice. It is not necessary to show that person, to be affected, knew of other's possession, if of such a character as to constitute notice. *Id.*

4. H. conveyed to S. real estate, deed for which was not recorded until after third person, who had levied upon same real estate before conveyance, brought action against H. for possession. Held, that S. was purchaser *pendente lite*. *Smith v. Hodgson*, 615.

5. A purchaser of real estate *pendente lite* is chargeable with notice of character of suit, and of extent of claim asserted in pleadings, in reference to title of such real estate, without express or implied notice in point of fact. *Id.*

6. The litigating parties are exempted from taking any notice of title so acquired. *Id.*

NUISANCE. See **EQUITY**, 13. **MUNICIPAL CORPORATION**, 9, 10, 21.

OFFICER. See **CONSTITUTIONAL LAW**, 7, 16, 17, 44, 45. **SURETY**, 4, 5.

1. That one transacts his business in his dwelling does not make it lawful for an officer to break the outer door to serve process. *Welsh v. Wilson*, 190, and note.

2. Where the sheriff makes an unlawful levy, and is sued for trespass, it cannot be taken in mitigation of damages that, pursuant to such levy, he sold the goods and paid proceeds to execution creditor. *Id.*

3. Where an officer is "subject after hearing to removal by the mayor, by and with the advice and consent of the aldermen," the hearing must be by the "board of mayor and aldermen." Hearing by aldermen alone is insufficient, even if by officer's consent. *Andrews v. King*, 79.

4. Where officer is removable in manner above stated, for "inefficiency or other cause," mayor and aldermen must find sufficient cause to exist as matter of fact, and so adjudicate, before valid order of removal can be made. *Id.*

5. Persons accepting position of school directors must defend suits against district, and protect its property, to the best of their skill and ability, regardless of any private interest they may have. *Noble v. Directors*, 743.

6. If such directors interpose no defence and allow decree to pass in their favor against some of them, it may be set aside on bill by district and defence allowed. *Id.*

7. Statute fixing annual salary of public officer at named sum, without limita-

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tion as to time, should not be deemed abrogated or suspended by subsequent enactments which merely appropriate a less amount for the services of that officer for particular fiscal years, and which contain no words that expressly, or by clear implication, modify or repeal the previous law. *United States v. Fisher*, 109 U. S. 143, and *United States v. Mitchell*, Id. 146, distinguished. *United States v. Langston*, 549.

ORDINANCE. See **CONSTITUTIONAL LAW**, 36, 37.

PARENT AND CHILD. See **ACTION**, 8, 9. **ADVANCEMENT.** **EVIDENCE**, 11. **NEGLIGENCE**, 7, 8, 25.

When minor son makes contract for his services on his own account, and father knows of it without objecting, father cannot recover of employer wages paid the son; and in such case question is not whether son was emancipated, but whether father knew of contract and made no objection. *Atkins v. Sherbino*, 676.

PARTICULAR WORDS AND PHRASES.

1. "Act of God." *Davis v. Rd.*, 650, and note.
2. "Control." *Car Co. v. Rd.*, 140.
3. "Caused wholly or in part by infirmity or disease." *Crandell v. Ins. Co. of N. A.*, 386, and note.
4. "Effected through external, accidental and violent means." *Id.*
5. "Debt." *Holcomb v. Winchester*, 70.
6. "Proved." *Tyre & Spring Works Co. v. Spaulding*, 285.
7. "Reasonable doubt." *Davis v. People*, 142.
8. "Telephone." *Hockett v. State*, 317, and note.
9. "Vein, lode or ledge." *Mining Co. v. Cheesman*, 283.

PARTITION. See **DOWER**.

1. Decree of partition not appealed from in probate court is conclusive upon parties and privies as to title at time of its rendition; and they are estopped to claim a greater interest in the land than the share decreed them. *Davis v. Durgin*, 798.

2. In chancery suit for partition where defendant impeaches complainant's title on equitable grounds, the court will not suspend the suit until the title be settled, but will pass upon such title and settle all disputes concerning it in the partition suit, and grant relief accordingly. *Read v. Huff*, 150.

PARTNERSHIP. See **ASSIGNMENT**, 7. **CONTRACT**, 8. **EXEMPTION**, 6, 8. **MORTGAGE**, 11. **RECEIVER**, 5, 6. **REMOVAL OF CAUSES**, 7.

1. Individual interest of copartner in firm effects is attachable. Attachment may be made by seizure of effects, and officer may remove them for safe keeping. *Trafford v. Hubbard*, 677.

2. That defendant has overdrawn his account with firm, does not invalidate attachment; but the execution by him of general assignment for benefit of creditors, dissolves it. *Id.*

3. One may contract with particular member of a firm, for an interest in his share of profits, without making himself a member of such firm and liable for its debts. *Meyer v. Krohn*, 411.

4. Proof of mailing notices of dissolution of partnership and retirement of certain members thereof, properly addressed to persons having had prior dealings with firm, is *prima facie* evidence that notices were received by those parties, but such presumption may be rebutted by proof to the contrary. *Id.*

5. In non-trading partnerships (*e. g.*, one for conducting a theatre) presumption is that individual partners have not authority to bind firm by note in firm name. This presumption may be overcome by proof of express authority, or state of facts justly implying authority. *Pease v. Cole*, 744.

6. Where one partner was township treasurer, and with knowledge of copartner deposited township funds to firm credit, *Held*, that each was *particeps criminis*, and that as to such funds the law will aid neither party against the other. *Davis v. Gelhaus*, 214.

7. Where M. was to conduct a saw-mill, pay its expenses from the proceeds, and divide the net profits with two others, who with himself owned the mill

PARTNERSHIP.

property, there was clearly a partnership between the parties. *Camp v. Montgomery*, 151.

8. The rule that there may be a valid partnership although one or more of the parties are guaranteed by the others against loss prevails in Georgia, notwithstanding the last clause of section 1890 of the code provides, that a "common interest in profits alone does not constitute a partnership." *Id.*

9. If parties go into an adventure, one furnishing money or stock and the other skill or labor, and to share the net profits, they are partners, since they have a joint interest in the profits as contradistinguished from the common interest. *A fortiori* is there a partnership where, in addition to this, there is a joint interest in the property used. *Id.*

10. Upon application for receiver of partnership the only question for consideration is, whether on the facts disclosed, it is apparently necessary in order to protect partnership assets until rights of partners can be determined on full hearing of case; and in determining the propriety of such action, the averments of the answer will be considered as well as the allegations of the bill. *Heflbower v. Buck*, 284.

11. Where settlement of partnership affairs is nearly at an end, and it is manifest that to grant an injunction and appoint a receiver would probably cause unnecessary trouble and expense, without substantial benefit to any parties concerned, the application will be denied unless the facts show danger to partnership assets in hands of selling partner, by reason of insolvency or otherwise, or some clear breach of duty or conduct amounting to fraud on his part. *Id.*

PARTY WALL. See **COVENANT**, 4.

PATENT. See **EXECUTION**, 2. **PAYMENT**, 3. **TELEPHONE**, 2.

1. Cannot be taken out for article old in purpose, shape and mode of use, when made for first time out of an existing material, and with accompaniments before applied to such article. *Gardner v. Herz*, 478.

2. Plaintiff was patentee of combination lock, the essential feature of which was turning bolt. He granted no licenses, but manufactured locks himself, being fully able to supply the demand. Defendant, infringing on plaintiff's patent, sold a lock having the turning bolt device, at a reduced price, forcing latter to do same in order to hold his trade. *Held*, that defendant's infringement must be considered to have caused entire loss of plaintiff, by reduction in prices, after allowing proper sum for any other patented device contained in defendant's locks, and for any other causes which gave to defendant an advantage in selling his locks. *Yale Lock Co. v. Sargent*, 411.

PAYMENT. See **CONFLICT OF LAWS**, 3. **DEBTOR AND CREDITOR**, 6. **MORTGAGE**, 29. **SURETY**, 43.

1. Action will not lie to recover taxes illegally assessed and voluntarily paid. *Dunnell Co. v. Newell*, 350.

2. Tax is not paid under compulsion merely because collector holds warrant for levy or distraint, but if paid under protest tax illegally assessed may be recovered. *Id.*

3. A. relying wholly on representations of B., made without fraud, contracted to pay and did pay B., fixed sum for privilege of working under certain patent, of which he was owner. It afterwards turned out that patent was void: *held*, that A. could not recover his money. *Schwarzenbach v. Odorless Co.*, 744.

PENALTY. See **DAMAGES**, 1.

PHYSICIAN. See **CONTRACT**, 12.

PLEADING. See **ACTION**, 4. **ATTACHMENT**, 11. **BILLS AND NOTES**, 20, 21. **COMMON CARRIER**, 6. **CRIMINAL LAW**, 13, 14, 21. **FRAUDS, STATUTE OF**, 8. **HUSBAND AND WIFE**, 8. **MANDAMUS**, 1, 2. **SET-OFF**, 1. **SLANDER AND LIBEL**, 2, 3.

1. Counts in covenant and case may be joined in a declaration on a single cause of action. *Crawford v. Parsons*, 412.

PLEADINGS.

2. Answer of failure of consideration must set out facts showing failure ; and error in sustaining demurrer to such an answer is not rendered harmless, merely because general plea of want of consideration is left standing. *Tyler v. Anderson*, 570.

3. Plaintiff received consignments from defendant, who is owner of three different mills, one being carried on in his own and the other two under different names, but being ignorant of this fact, plaintiff kept the three accounts separate. In action brought by plaintiff to recover balance of account with mill run under name of defendant, where answer is general denial and payment, defendant not allowed to show balance due him on account between plaintiff and another of the mills ; such balance can only be availed of by way of set-off ; and defendant cannot show that there were in plaintiff's hands goods from mill run under defendant's name not included in account sued on. *Talcott v. Smith*, 795.

PLEDGE. See ATTACHMENT, 3, 4.

POSSESSION. See DEBTOR AND CREDITOR, 1. NOTICE, 3, 18.

POWER.

1. Where testator invests his widow with life estate in his property, with power to dispose of remainder to his heirs, an attempted appointment in such manner as to secure to herself a substantial pecuniary benefit not authorized by testator is void. *Shank v. De Witt*, 412.

2. An honest misconstruction of power conferred, will not save exercise of power, if true purpose of it is violated. *Id.*

PRACTICE. See CONTEMPT, 1. EQUITY, 1, 2, 13. ERRORS AND APPEALS, 3, 6. EVIDENCE, 13, 23. EXECUTORS AND ADMINISTRATORS, 7. INJUNCTION, 5. MASTER AND SERVANT, 16. NONSUIT. RECEIVER, 1. SET-OFF, 4. TRUST AND TRUSTEE, 4. WILL, 18, 19.

Under stipulation of parties, a case was tried by a Circuit Court, without a jury, and judgment entered finding certain facts, and, as a conclusion of law, the issues joined for defendant. On same day stipulation was filed, that on the trial certain facts were "proved." Held, that stipulation was not an agreement as to existence of any facts, but merely a statement as to what the proof showed on the trial ; and, therefore, as to any facts stated in stipulation to have been shown by proof at the trial, if they were not contained in the special findings, the only conclusion could be that court did not find them to be facts ; and that the case must be adjudicated on the special findings alone. *Tyre and Spring Works Co. v. Spawding*, 285.

PRESCRIPTION. See WATER AND WATER-COURSES, 7, 8.

PRESUMPTION. See ACTION, 9. AGENT, 5. INSURANCE, 7. MORTGAGE, 20. PARTNERSHIP, 4. SURETY, 2, 3, 5. TAX AND TAXATION, 4. TRUST AND TRUSTEE, 12.

1. Where marriage in fact is shown, law raises strong presumption in favor of its legality, and burden of proof is on party contesting its validity. *Johnson v. Johnson*, 412.

2. So, although presumption in favor of validity of marriage in fact and innocence of contracting parties may conflict with that of continued life of former husband or wife not heard from for period less than seven years, yet if neither presumption is aided by proof of facts co-operating with it, the former prevails over latter. *Id.*

PROHIBITION.

1. Where inferior court has clearly no jurisdiction and defendant has objected at outset, and has no other remedy, he is entitled to writ as matter of right, and refusal to grant it, where all the proceedings appear of record, may be reviewed on error. *Smith v. Whitney*, 214.

2. It seems, that writ issues from law side of court with both common law and equity powers. *Id.*

PUBLIC POLICY. See ATTORNEY. JUDICIAL SALE, 1. SHIPPING, 1. USURY, 2.

PUBLIC POLICY.

1. A. deposited with stakeholder amount of wager on games between C. and D. When it was clear that A. would lose, he notified stakeholder not to pay money over, denouncing the match. At close, stakeholder paid over amount to winner. *Held*, that A. should recover his deposit. *McGrath v. Kennedy*, 351.

2. A condition of admission into aged person's home, besides payment of stipulated entrance fee, was that applicant should transfer to institution all his property or income of any kind. *Held*, neither *ultra vires*, nor against public policy. *Home v. Hammerbacker*, 478.

3. Where applicant declared in writing that he had no property other than entrance fee, and was admitted without conveyance of his property, and after his death it was discovered that at time of application he had some \$1200, *Held*, that institution was entitled to relief in equity against administrators of deceased. *Id.*

QUORUM. See MUNICIPAL CORPORATION, 3-6.

RAILROAD. See COMMON CARRIER, 9, 10, 14. CONSTITUTIONAL LAW, 6, 9, 10, 12, 14, 30. CONTRACT, 14. CORPORATION, 1, 27. DAMAGES, 7. HIGHWAYS, &C., 7. MASTER AND SERVANT, 5, 6, 11. MORTGAGE, 3, 7. NEGLIGENCE, 2, 11, 12, 14, 16, 21-25. TAX AND TAXATION, 8.

1. Railroad commissions: the decision of the Supreme Court of the United States, in *Farmers' Loan and Trust Co. v. Stone*, 10 U. S. Rep., stated and commented on. *Legal Notes*, 202.

2. Damages are not recoverable by railroad company against a town which has laid out ways over its tracks, for interference occasioned to its business by opening of the new ways, nor for any increased risks or expense in running its trains. *Id.*

3. While one railroad company may have the right to acquire the stock of another company, it has no right to use its controlling influence, thus acquired, with the directors of latter company, so as to sacrifice that company's interests. *State v. Brown*, 344.

4. Discrimination in rates of freight, made exclusively on the basis of a larger freightage, will not be sustained. *Schofield v. Rd.*, 79.

5. Where plaintiffs were frequent shippers and remedy at law would lead to multiplicity of suits, *held*, that the court would intervene by injunction, and that it was not a pre-requisite that plaintiffs should have first established their rights at law. *Id.*

6. Where railroad corporation is consolidated under statutes of several states, its acts of injurious discrimination committed or threatened in one of the states to shippers along the line of its road in that state, may be enjoined by the courts of that state. *Id.*

7. Where office safe kept at railroad depot, and used by agent as place of deposit for daily receipts and valuable papers, is useful and facilitates successful operation of road, it is not subject to levy under execution on judgment against road. *Rd. v. Shimmell*, 644, and note.

8. In assessing damages to be recovered by railroad company against a town for its land taken by locating town ways across its track, jury may consider, to ascertain present value, not only use railroad now makes of its located limits at the crossings, but what use it may reasonably be expected to make of same in near future. *Rd. v. Inhabitants of Deering*, 549.

9. It is not an unconstitutional exercise of legislative power to require a railroad corporation to build and maintain highway crossings laid out over its tracks so far as said crossings are within its located limits, although law imposing such burden was enacted since railroad was built, the company being subject to general laws of state in existence when its charter was granted, and such as should thereafter be passed. *Id.*

10. In an action to recover damages for fire alleged to have been occasioned by negligent running of defendant's locomotives, plaintiff offered only indirect proof that fire was so caused; defendant then offered to prove custom of farmers to set fire to leaves at that season to improve pasturage, and that such fires had been started there annually long before defendant's road was built. *Held*, that the evidence was inadmissible. *Green Ridge Co. v. Brinkman*, 286.

RAILROAD.

11. Where railroad company is sued for damages resulting from a fire communicated by defendant's engine, proof that fire so originated creates presumption of negligence and *onus probandi* is on defendant to show the contrary. *Green Ridge Co. v. Brinkman*, 286.

12. The fact that the engine habitually scattered sparks to such an extent as to endanger combustible material along the line of road, is one from which the jury may find negligence on the part of defendant. *Id.*

13. Unless specially authorized by its charter or aided by some other legislative action, a railroad company cannot, by lease or other contract, turn over to another company, for a long time, its road and use of its franchises; nor can any other company, without similar authority, make contract to operate road, property and franchises of first corporation. Such contract is not among ordinary powers of railroad company, and is not to be inferred from usual grant of powers in railroad charter. *Thomas v. Rd.*, 101 U. S. 91, reaffirmed. *Penn Co. v. St. Louis Rd.*, 550.

14. Doctrine that acts may be done and property change hands, under void contracts fully executed, with which courts will not interfere, is sound, but relief in any such case must be based on invalidity of contract and not in aid of its enforcement. While plaintiff here might recover in appropriate action rental value of use of its road against lessee company, the other defendants who had received nothing, but had been paying out money under void contract cannot be compelled to pay more under same. *Id.*

RATIFICATION. See CORPORATION, 25. EVIDENCE, 11. MASTER AND SERVANT, 10. MUNICIPAL CORPORATION, 22. PARTNERSHIP, 5. SALE, 1.

RECEIVER. See CORPORATION, 16. EQUITY, 14. MORTGAGE, 16. PARTNERSHIP, 10, 11. TAX AND TAXATION, 6.

1. It is an inflexible rule that receiver should not be appointed except on notice to person whose property is to be divested, save in cases of grave emergency, demanding immediate interference of court for prevention of irreparable injury. *Meyers v. Coiner*, 677.

2. Compensation of, in all cases not attended with peculiar circumstances requiring augmentation, should be regulated by analogy to commissions allowed guardians and trustees for similar services. Order making allowance for compensation should be definite. *Tome v. King*, 351.

3. Where receivers are appointed solely at instance and for benefit of second mortgage bondholders, and trustees were appointed to sell exclusively for benefit of same parties, first mortgage bondholder cannot be assessed for commissions and expenses of receivers and trustees. *Id.*

4. If fund in court be insufficient to compensate and indemnify receivers, parties at whose instance they were put upon the property, should be required to provide the means of payment. *Id.*

5. Recovery of judgment against partners after appointment of receiver to take charge of firm assets for benefit of creditors generally, creates no lien against property of firm in hands of receiver; such property being in custody of the law is not subject to execution or garnishment. *Jackson v. Lahee*, 286.

6. A receiver was appointed on bill filed by one partner against the other for settlement of partnership accounts and payment of creditors of firm, which was insolvent, and court had ordered notice to be given to all creditors to prove their debts before the master. It was held, that one of creditors by recovery of judgment against firm during pendency of bill and the filing of creditors' bill on same day that notice to creditors was ordered, did not acquire any lien on assets in receiver's hands or right to be preferred over other creditors—the more especially when such creditor proved his claim before the master and shared in distribution of funds in his hands. *Id.*

7. Plaintiffs (4) and defendants (13) are members of unincorporated joint-stock company, property of which at commencement of suit consisted of building, small amount of furniture and \$82 in money, in all of value of about \$1100; stock was divided into \$10 shares, of which plaintiffs owned twelve and defendants the balance; building was erected for use of Patrons of Husbandry, of which all defendants are and plaintiffs had been members. *Held*,

RECEIVER.

that equity does not require appointment of receiver to sell property and divide proceeds among members of company. *Hinkley v. Blethen*, 616.

8. ACTIONS BY AND AGAINST RECEIVERS, 289.

REFORMATION. See **EQUITY**, 22.**RELEASE.** See **EQUITY**, 21.**RELIGIOUS SOCIETY.** See **TRUST AND TRUSTEE**, 2.**REMOVAL OF CAUSES.** See **HABEAS CORPUS**, 1.

1. Colorable assignment to prevent removal will not authorize United States courts to take jurisdiction. *Oakley v. Goodnow*, 478.

2. If it appears that some title, right, privilege or immunity on which recovery depends, will be defeated by one construction of constitution or law of United States, or sustained by opposite construction, case will be one arising under the constitution or laws of the United States, within meaning of Act of March 3d 1875; otherwise not. *Starin v. New York*, 79.

3. Bill filed by judgment creditor to marshal liens and obtain sale of debtor's property free of encumbrance, to pay his judgment after satisfying prior claims and in meantime to have receiver appointed, raises but a single, indivisible cause of action, though each of lien holders may have a separate defence. *Fidelity Co. v. Huntingdon*, 352.

4. Answer of defendant to complaint, which answer was signed only by her attorney and was not under oath, stated that defendant was citizen of New York. *Held*, that she was not thereby estopped from subsequently showing on petition for removal, that she was citizen of Massachusetts, it having been shown how mistake arose, and defendant having promptly denied erroneous statement as soon as it was brought to her attention. *Corson v. Hyatt*, 478.

5. Mere filing of petition for removal of suit that is not removable, does not work a transfer. If state court proceeds after petition for removal, it does so at risk of having its final judgment reversed, if record shows that when petition was filed, court ought to have given up its jurisdiction. *Stone v. State*, 351.

6. No statute authorizes removal of suit between a state and citizens, on account of citizenship. *Id.*

7. Where money sued for was received by defendants as partners, all the partners must unite in petition for removal. *Id.*

8. Plaintiffs having removed action of ejectment against a tenant on ground of citizenship, the landlords who were of same citizenship as plaintiffs, were let in as defendants. *Held*, that cause was thereupon improperly remanded. *Phelps v. Oakes*, 352.

9. State statute provided that proceedings for condemnation of land for railway purposes should be instituted in probate court of proper county; that necessity for taking lands, and their value, should be determined by commissioners, or jury selected by such court, and that such proceedings should only be subject to review by the Supreme Court. Under this statute railroad company petitioned probate court for condemnation of defendant's lands. Defendant answered petition, and demanded removal to federal court. *Held*, that case was removable directly from probate court. *Railroad Co. v. Copper Co.*, 177, and *note*.

10. It is no objection to jurisdiction of federal court in such cases, that it involves exercise of right of eminent domain. *Id.*

RESCISSION. See **SALE**, 1, 2.**RESERVATION.** See **DEED**, 4, 5.**RESIDENCE.** See **DOMICILE**.**REVOCATION.** See **CONTRACT**, 10.**SALE.** See **AGENT**, 1, 2, 4. **BAILMENT**, 1-3. **CONTRACT**, 6, 7. **DAMAGES**, 10, 11. **DEBTOR AND CREDITOR**, 1, 4, 5, 7, 8. **FIXTURES**. **MORTGAGE**, 13

1. If vendor of goods after being advised of fraud of purchaser in misrep-

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resenting his ability to pay, accepts further security he cannot afterwards rescind. *Bridgeford v. Adams*, 214.

2. One who claims right to rescind sale must proceed within reasonable time in making inquiries. *Id.*

3. The general rule in this country is, that where there is a sale of chattels in the vendor's possession at the time, at a fair price, there is always an implied warranty of title, unless the facts and circumstances are such as to warrant a different conclusion. *Edgerton v. Michels*, 260, and note.

4. One intrusted with the possession, management, control and disposal of goods to be sold, is an agent and not a broker, and is liable upon an implied warranty of title. *Id.*

5. Under contract for sale of "500 tons No. 1 Shotts' (Scotch) pig iron, at \$26 per ton, cash, in bond at New Orleans; shipment from Glasgow as soon as possible, delivery and sale subject to ocean risks,"—shipment from Glasgow is a material part of contract. *Filley v. Pope*, 80.

6. Where vendors rescind a sale on the ground of fraud, and bring replevin, under which a portion of the goods is seized and returned, they cannot recover for the balance against the assigned estate of the vendee upon a claim for goods sold and delivered, but must bring an action on the tort. *Farwell v. Meyers*, 243, and note.

7. T. agreed to put in for S. an elevator "warranted satisfactory in every respect." After trying elevator, S. refused to accept it. *Held*, that provided he acted in good faith, S. was sole judge whether elevator was satisfactory. *Singerly v. Thayer*, 14, and note.

8. Where statute provides that no condition attached to sale of personal property shall be valid as against creditors of vendee, or subsequent purchaser from him in good faith, unless in writing, acknowledged and recorded, parol condition that title shall not pass until payment of price, is valid against creditors of vendee, who, at time of sale had notice of condition. *Coover v. Johnson*, 310, and note.

9. Innkeeper sent following order to wholesale liquor dealer. "Please send by first express, a half barrel Bourbon whiskey and two baskets of Piper wine. What is used I will account for and ship rest back to you. I want it for the commercial travellers who will be here Friday to dinner." *Held*, that title passed on delivery to innkeeper, so that liquors could be attached by his creditors. *Hotchkiss v. Higgins*, 79.

10. Four hundred and ten shares of stock of a newly incorporated company were sold at thirty cents on the dollar. The plaintiff sold five shares, thus paid for, to the defendant at par, representing that all stockholders had paid par for their stock. *Held*, that this was a misrepresentation of a material fact by which the defendant was misled as to the company's assets. *Coolidge v. Goddard*, 151.

11. Flour was ordered by brokers for Dub & Co., with this direction: "Ship as soon as you can, forty-five days draft, to B. Dub & Co." Dub & Co. assigned it to M., without returning draft signed, it being sold with bill of lading and invoice stating terms as forty-five days acceptance. *Held*, the giving of acceptance was condition precedent to acquisition of title by B. Dub & Co., and sellers of flour might maintain trover therefor against M. *Matthewson v. Belmont Co.*, 550.

12. Agreement in writing to sell personal property, title to which is reserved by seller until purchase-money is paid by buyer, is a conditional sale and does not vest title in buyer until purchase-money is paid, notwithstanding possession of property is given to purchaser at time of making agreement; and such an agreement is valid against subsequent creditors and *bona fide* purchasers for value without notice. *Printing Press Co. v. Walker*, 678.

13. Respondent, a dealer in New York, shipped intoxicating liquor to parties in Vermont by express, C. O. D. The liquor, intended for an unlawful use, was seized without warrant while in possession of express company and confiscated before delivery and payment. *Held (a)*, that seizure was lawful; (b), that contract was inchoate while goods were in transit; that payment was condition precedent, and there was no surrender of legal title; that express

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company was agent of consignor, and that he was legally convicted under indictment charging him with keeping liquor for unlawful purpose. *State v. O'Neil*, 677.

14. When in such case the liquor has been delivered by express company to consignee in Vermont and paid for, the sale is in that state and vendor is liable to conviction for an illegal sale. *Id.*

SEAL. See **AGENT**, 11. **CORPORATION**, 15. **MORTGAGE**, 28.

SET-OFF. See **TRUST AND TRUSTEE**, 5. **VENDOR AND VENDEE**, 2.

1. In pleading set-off defendant, in order to recover, is required to prove same facts as if he had brought suit on his demand. *Ellis v. Cothran*, 796.

2. Defendant cannot recover on matter by way of set-off, when his claim was not due at time plaintiff brought suit; nor can he, after suit brought, purchase a demand against plaintiff and set it up as a defence. *Id.*

3. If factor sell in his own name, as owner, and does not disclose his principal, acting ostensibly as real owner, although principal may afterwards bring his action against purchaser on the contract, yet latter, if he *bona fide* dealt with factor as owner, will be entitled to set off any claim he may have against factor in answer to demand of principal. *Ruan v. Gunn*, 550.

4. It is not essential to proper allowance of legal demand, as set off in equity against a judgment at law, on ground of insolvency of party in whose favor judgment was recovered, that insolvency should have occurred subsequent to judgment; and although cross-demand might have been set off in action at law in which judgment was recovered, that was permissive, not compulsory on defendant. *G. & S. W. Rd. v. Ennor*, 678.

SHELLEY'S CASE, RULE IN. See **LIFE TENANT**, 2.

SHIPPING.

1. Whether contract between two of several part owners of a vessel that each shall sail her as master alternate years, is void as against public policy—*quære*. *Rogers v. Sheerer*, 80.

2. Assuming such contract to be valid, true construction of it is, that each shall sail the vessel alternate years, only so long as he properly performs the duties of master. *Id.*

3. Action for money had and received cannot be maintained by part owner (not ship's husband) for his share of freight money, against master who collected and remitted same to ship's husband after receiving written notice from such part owner to remit his share to him. *Patten v. Percy*, 80.

4. Tenants in common must join in an action to recover earnings of vessel unless there is an excuse for severance of claim. Bankruptcy of one owner is not valid excuse, his assignee should be joined, or if assignee has not been appointed, suit should be commenced in names of bankrupt and co-owners until assignee comes in. *Stinson v. Fernald*, 151.

SLANDER AND LIBEL. See **INJUNCTION**, 1.

1. Reply of employer to discharged employee, in answer to question as to why latter was discharged, is privileged, and burden is upon employee to show existence of malice. *Beeler v. Jackson*, 479.

2. It is sufficient if complaint states facts sufficient to show legal wrong for which law will afford redress. *McElwee v. Blackwell*, 479.

3. In action for slander of title to trade-mark, where injury is not so much the defamatory words, but was occasioned by positive acts and threats, by which customers of plaintiff were deterred from trading with him, *held*, error to non-suit plaintiff, because complaint did not set out the actionable words. *Id.*

4. Action for libel cannot be sustained for false charges of crime in an affidavit for warrant made before magistrate having jurisdiction of alleged offence, though deponent may be prosecuted for perjury; but if made maliciously before a court without jurisdiction such action will be sustained. *Francis v. Wood*, 282.

5. The defendant falsely and maliciously spoke of plaintiff the following words, by reason of which he lost his position as clerk and assistant weigh-

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master: "He has caused the ruin and downfall of my clerk!" "Will (meaning plaintiff) has been the ruination of my clerk; I do not want him (meaning plaintiff) to have anything to do with my business;" meaning that plaintiff should not weigh any goods consigned to defendant. *Held*, that the words thus spoken were actionable. *Wilson v. Cottman*, 796.

6. When some specific damage is caused by words falsely and maliciously spoken, they may become actionable, when otherwise the law would give no redress against the person speaking them. *Id.*

7. At a meeting of a body of citizens of Philadelphia styled the "Committee of One Hundred," assembled for the purpose of considering the merits of candidates for public office, a letter reflecting severely on character of a judge who was a candidate for re-election, by statements subsequently acknowledged to be wholly untrue, was, by order of chairman, read by secretary, and, reporters being present, appeared at length in daily papers. *Held*, that the communication was privileged, and legal malice not inferable therefrom; that being based on probable cause, it was proper for discussion at such meeting; and that court below was justified, in absence of proof of actual malice, in entering nonsuit in action for libel brought against chairman of meeting. *Briggs v. Garrett*, 493, *and note*.

SPECIFIC PERFORMANCE. See **EQUITY**, 17-19. **INSURANCE**, 24.

Mere fact that contract stipulates for liquidated damages in case of failure to perform, does not prevent court of equity from decreeing specific performance; it is only where contract is alternative—the performance of certain acts or payment of certain money in lieu thereof—that equity will not decree specific performance. *Lyman v. Gedney*, 286.

STARE DECISIS. THE PRINCIPLE OF STARE DECISIS, 745.**STATUTE.** See **CONSTITUTIONAL LAW**, 34, 38, 39. **OFFICER**, 7.

1. General repealing clause in unconstitutional statute does not affect previous laws. *Wilke v. Barnes*, 352.

2. Where, by act submitting question to voters of the several election districts of Caroline county, whether or not spirituous or fermented liquors should be sold therein, majority of voters in Third Election District was against the sale, and by subsequent act new election district was established out of said third district, the prohibition will continue. *Higgins v. State*, 479.

STOCK. See **ATTACHMENT**, 2-5, 15. **BANKRUPTCY**, 4. **CONTRACT**, 10, 23. **CORPORATION**, 1, 6-8. **GIFT**, 4. **MORTGAGE**, 10.**STREET.** See **DEED**, 5. **HIGHWAYS, &c.**, 3, 4-7.**SUBROGATION.** See **COMMON CARRIER**, 20. **EQUITY**, 23. **MORTGAGE**, 18, 24, 29.**SUNDAY.** See **MUNICIPAL CORPORATION**, 18.

1. Carrying on of one's ordinary business on Sunday is an indictable offence at common law, and also under statutes of Tennessee, if conducted so openly as to attract public observation. *Parker v. State*, 722, *and note*.

2. It is no defence that accused conscientiously observes the "seventh" rather than the "first" day of the week. *Id.*

SURETY. See **ATTACHMENT**, 14. **BILLS AND NOTES**, 7. **DECEDENTS' ESTATES**, 1. **EXECUTORS AND ADMINISTRATORS**, 5. **GUARANTY. LIMITATIONS, STATUTE OF**, 7, 8. **LUNATIC**, 5. **MORTGAGE**, 24, 25.

1. On guardian's bond, concluded by final settlement of guardian's accounts in probate court, in absence of fraud and collusion. *Braiden v. Mercer*, 479.

2. Where creditor receives from principal debtor payment of interest in advance on past due note, agreement to give time is necessarily implied, and creditor is debarred suing meantime on note and surety discharged—unless creditor can show mistake or, possibly, agreement that right of suit should not be suspended. *Gardner v. Gardner*, 412.

3. Whether sealed note which matured in 1860 and was credited with pay-

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ments by principal debtor down to 1865 should be presumed paid as to sureties in 1884, raised but not considered. *Gardner v. Gardner*, 412.

4. Security on bond of defaulting county treasurer against whom an execution has issued for funds belonging to county in hands of treasurer, cannot take homestead, which will exempt his property from debt incurred by reason of his obligation on the bond. *McWatty v. Jefferson Co.*, 551.

5. Presumption would be that funds in hands of treasurer arose, at least in part, from taxes, and no evidence was offered by surety in this case that any part of fund came from other sources, though treasurer was bound to keep record of all funds received by him and source from which they came. *Id.*

6. Surety of a trustee cannot maintain bill in equity to require his principal to give additional securities on his bond given to secure *cestuis que trustent*, or counter security, and on failure to give such security have him removed. *Ridge-way v. Potter*, 287.

7. The principal is under no legal duty to a surety to keep his co-sureties in equal solvency as they were when they first became such, or to keep any co-sureties to share in the liability. *Id.*

8. Courts of equity, in relief of sureties under apprehension of loss have gone to extent of allowing surety, after debt has become due, to file a bill to compel principal to discharge it; and a surety, when debt has become due, may compel creditor to sue for and collect it from principal. *Id.*

9. On bill by a surety on bond of trustee to compel him to render an account to the court where the *cestuis que trustent* are not made parties, it is not error for court to refuse to state the account, as it would not conclude them. *Id.*

TAX AND TAXATION. See CONSTITUTIONAL LAW, 7, 11, 27, 30. LICENSE, 1. MANDAMUS, 5, 6. MUNICIPAL CORPORATION, 16. PAYMENT, 1, 2. UNITED STATES, 2. USURY, 10.

1. Trustee resident in another state, who holds as trustee no property in Rhode Island, is not liable to taxation in town where his *cestui* resides in that state. *Anthony v. Caswell*, 616.

2. Where property is collected from one or more points, by any means of transportation, and is awaiting the necessary preparation and facilities for further transportation, it is not liable to taxation. *Board v. Standard Oil Co.*, 287.

3. But where property is collected, even at point of final shipment, to await the rise of markets or from any other cause having no relation to preparation for, or exigencies of transportation, it will be held to have acquired a situs making it subject to taxation. *Id.*

4. Exemption from taxation is a franchise, a surrender of which may be presumed from long acquiescence in actual taxation, which government may take advantage of, though same period of non-user would be ground of forfeiture in direct proceeding by state to revoke franchise. *State of New Jersey v. Wright*, 412.

5. Goods intended for export from state of their production to another state are subject to taxation in the former, until they have been started upon such transportation in a continuous route; the carrying of them to the depot where the journey is to commence is no part of that journey. *Coe v. Errol*, 287.

6. Where proper officers of county or town have levied a tax for satisfaction of judgments against it, and no one can be found to accept the office of collector, a court of equity has no jurisdiction to fill that office or to appoint a receiver to perform its functions. *Thompson v. Allen Co.*, 152.

7. An assessment of different kinds of property, as a unit, which includes property not legally assessable, and in which part of tax illegally assessed is not separable from other part, is invalid and will not support an action for recovery of entire tax so levied. *Santa Clara Co. v. Rd.*, 551.

8. The fences erected upon line of railroad between its roadway and land of coterminous proprietors cannot be assessed under head of roadway. *Id.*

9. Buildings and other property owned by municipal corporations and appropriated to public uses, are but the means used for municipal purposes and are exempt from taxation not by express statutory prohibition, but by necessary implication. *Camden v. Camden*, 151.

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10. A village corporation was authorized by its charter to raise money to defray expenses of police force, &c., and also to erect a hall. The building thus erected contained a public hall, police court room, &c., and when not in use for purposes of the corporation, the hall and other rooms were let for hire and the money received therefrom was used towards paying expenses of the corporation. *Held*, that building and lot were not liable to taxation by the town in which they were situated. *Camden v. Camden*, 151.

TELEGRAPH. See **CONTRACT**, 4. **EVIDENCE**, 4, 5.

1. Prescribing a penalty against telegraph companies for failing to transmit a message is valid and constitutional, whether message is to a point within or without limits of the state. *Western Union Tel. Co. v. Ferris*, 287.

2. Where sender of message proves unreasonable delay, the burden of explaining it is on the company. *Id.*

3. Delay of several hours in transmitting message that could be sent in fifteen minutes shows want of diligence. *Id.*

4. Where business of office is such that one operator cannot receive messages with reasonable promptness, it is duty of company to supply required assistance. *Id.*

5. The law enjoins on telegraph companies prompt and skilful performance of their undertaking and for failure to transmit or deliver a telegram to person to whom it is addressed within a reasonable time, such company is liable to person injured whether he be the sender or person to whom it was addressed. *W. U. Tel. Co. v. Hyer*, 678.

6. In such case it is no defence that sender did not inform operator of importance of telegram, when it is not shown that such information would have changed method of transmission, time of delivery, or price demanded therefor. *Id.*

7. Nor is it any defence that message is in cipher, provided it is plainly written, and words are in letters of English alphabet. *Id.*

8. A verbal contract that plaintiff should labor for manufacturer at \$2.25 per day, commencing Sept. 1st, but for no stipulated period, is defeasible at will of either party, and telegraph company is liable for nominal damages only, in not delivering telegram to plaintiff, seasonably notifying him of terms of contract, whereby he lost all benefit from it. *Merrill v. W. U. Tel. Co.*, 551.

TELEPHONE.

1. Telephone company is common carrier, in same sense as telegraph company. Its instruments and appliances are devoted to public use and subject to legislative control; so that state legislature may prescribe maximum charges. *Hockett v. State*, 317, and note.

2. That article is manufactured under United States patent does not prevent a state, in exercise of its police powers, from regulating its use. *Id.*

3. The word "telephone" covers the entire system or apparatus. *Id.*

TENANTS BY ENTIRETIES. See **LIFE TENANT**.**TENANTS IN COMMON.** See **PARTITION**. 1. **SHIPPING**, 4.

1. One tenant in common may rightfully insist that the other shall contribute his proportionate share for preservation of joint property, but not that he shall enter on new investments, to be paid for from the joint property, or out of other funds belonging to him, against his judgment and inclination. *Field v. Leiter*, 797.

2. Where one of two tenants in common of a tract of land, which had been sold for taxes, instead of redeeming directly from the sale, made an agreement with the holder of the certificate of purchase, that latter should take out tax deed thereon, and then convey premises to former, which was done, it was *held*, that transaction amounted to but a redemption which enured to benefit of both tenants in common, and court of equity would compel one taking conveyance of tax title to convey to other one individual half of tax title on payment half cost thereof. *Lomax v. Gindele*, 798.

TORT. See **ATTACHMENT**, 1. **UNITED STATES COURTS**, 4.

TRADEMARK. See **SLANDER**, 3.

1. The words "health preserving" preceding the word "corset" in the name adopted by manufacturer of corsets under letters patent, but describe a quality of the corset and cannot, therefore, be employed as a trademark. *Ball v. Siegel*, 678.

2. Even if a party has a trade-mark in the name of "Balls" and picture, words and form of lettering on labels pasted on his boxes containing corsets, there is no infringement when a different name is used by another manufacturer with a picture, words and form of lettering so totally unlike those of former that no one can reasonably mistake one for the other. *Id.*

3. If the words of alleged infringing device are such as would be likely to mislead persons in ordinary course of purchasing the goods, then the injured party is entitled to equitable protection if he takes reasonable measures to assert his rights; but a court of equity is not bound to interfere when ordinary attention will enable purchasers to discriminate between the trade-marks used by different parties. *Id.*

4. Manufacturer has right to use his own name as mark upon his goods, although it be same name with that of another manufacturer of same goods, who makes the name a part of his own trade-mark, where there is no false representation. *Rogers v. Rogers*, 744.

TRESPASS. See **HIGHWAYS**, &c., 1, 2. **NEGLIGENCE**, 11, 12, 16. **OFFICER**, 2.

In trespass *quære clausum* for felling defendant's trees across fence line and covering plaintiff's land with brush, measure of damages is not confined to expense of removing brush, nor to value of land encumbered. *Hutchinson v. Parker*, 798.

TRIAL. See **CRIMINAL LAW**, 12.

Where plaintiff in action for personal injuries alleges that they are of permanent nature, defendant is entitled, as matter of right, to have opinion of surgeon on his condition, based upon personal examination; and the court should compel plaintiff to submit to such examination. But where evidence of experts is already abundant, court must exercise its sound discretion in compelling or refusing such examination, and its discretion is subject to review in case of abuse. *Sibley v. Smith*, 551.

TROVER. See **SALE**, 11.

1. To constitute conversion of chattels there must be some exercise of dominion over the property, in repudiation of or inconsistent with owner's rights. *Evans v. Mason*, 798.

2. In action of trover for horse hired by defendant to go to and from a place named without stopping, his mere delay in returning is not sufficient evidence of a conversion. *Id.*

TRUST AND TRUSTEE. See **BANK**, 6. **CORPORATION**, 2, 3, 22, 38. **DEBTOR AND CREDITOR**, 9. **EQUITY**, 14-16. **FRAUDS, STATUTE OF**, 4, 5. **GIFT**, 4. **INSURANCE**, 22. **JUDICIAL SALE**, 1, 2. **LIMITATIONS, STATUTE OF**, 11. **MORTGAGE**, 19. **SURETY**, 6, 9. **TAX AND TAXATION**, 1. **WILL**, 25.

1. An interest in land does not pass, by resulting trust, from owner to one whose money is expended in improving the land. *Bodwell v. Nutter*, 413.

2. When land was conveyed in trust for erection of church and academy for benefit of a Lutheran congregation, the church council could not transfer to others not Lutherans or to town council any portion of land for establishment of academy or school. *Busbee v. Mitchell*, 413.

3. Where trustee of fund held for benefit of life tenant with remainder over purchases bonds at premium, he may retain out of interest such sums annually as will restore to fund, at maturity of bonds, exactly what was taken therefrom at time of purchase. *Trust Co. v. Eaton*, 162.

4. Right of trustee to retain such sums out of income may be adjudicated by probate court upon settlement of his annual account. *Id.*

5. Where trustee holds note belonging to trust estate and receives in payment thereof a credit allowed to himself on his individual indebtedness, the payment

TRUST AND TRUSTEE.

is not, on part of maker of note, a good payment to trust estate although trustee is solvent at time of such payment. *Maynard v. Cleveland*, 288.

6. Where party receives money of another to be invested in purchase of land and pays out same, with other money of his own, in a purchase, taking deed in his own name, he will hold land so acquired in trust for person whose money he has so used in proportion it bears to entire consideration paid. *Springer v. Springer*, 413.

7. In such case holder of legal title cannot set up as defence to bill to enforce resulting trust, laches of defendant for time during which he recognised his equitable rights. Such defence will avail him only from time he sets up adverse claim. *Id.*

8. Where resulting trust is sought to be established, after lapse of fifteen years and death of many people having knowledge of facts, on ground that complainant's money was used in paying for land, and that his wife by fraud and conspiracy had conveyance made to her imbecile son by former marriage, it is incumbent on plaintiff to establish these facts by very clear and satisfactory evidence or he can have no relief. *Hencke v. Floring*, 413.

9. The title to house and lot was taken in 1852, in name of R., consideration being paid by D., who with his family continuously occupied and paid taxes on said premises until his death, without accounting for rents to R., or being called on by him to do so. R., at request of D., afterwards conveyed premises to C., who was D.'s daughter by a former wife. *Held*, that D. has a resulting trust in the premises, and that his wife was entitled to dower therein. *Mershon v. Duer*, 152.

10. Where husband pays for land which is conveyed to wife, the presumption is that a gift was intended, and a resulting trust will not arise in his favor. *Read v. Huff*, 150.

11. The proof which in such cases shall overcome the presumption of gift to the wife must be of facts antecedent to, contemporaneous with, or immediately following the purchase, so as to be in fact part of the same transaction, and must be equally explicit with the proof required to establish a resulting trust. *Id.*

12. A statute provided that "express trusts may be created" * * * "for the beneficial interest of any person or persons, when such trust is fully expressed and clearly defined upon the face of the instrument creating it, subject to the limitations as to time prescribed in this title." *Held*, that letters, statements, and agreements which passed between plaintiff and defendant, as evidence in this case, are sufficient to establish express trust within meaning of statute. Objection that individual interests of beneficiaries are not stated is met by rule that where conveyance of land is made to two or more persons and instrument is silent as to interest each is to take, presumption will be that their interests are equal. *Loring v. Palmer*, 552.

13. INVESTMENT OF TRUST FUNDS, 217.

TURNPIKE COMPANY. See CORPORATION, 4, 5.

ULTRA VIRES. See RAILROAD, 13.

UNDUE INFLUENCE. See ACTION, 2.

UNITED STATES. See CONSTITUTIONAL LAW, 4. ERRORS AND APPEALS, 10. MINES AND MINING, 1-4.

1. Plaintiffs wrote two letters to Chief of Bureau of Steam Engineering, U. S. Navy Department, offering to supply certain boilers at specified price, to which written replies were received stating that by direction of Secretary of Navy the offers were accepted, and that specifications and drawings would be furnished as soon as prepared. *Held*, that these letters did not constitute contract in writing and signed by contracting parties within meaning of Rev. Stat., sects. 3744-3747, and sects. 512-515; but were nothing more than preliminary memoranda. *Iron Co. v. United States*, 479.

2. Sect. 2504, schedule M., p. 480 (2d ed.), Rev. Stat., imposes tax fifty per cent. *ad valorem* on proprietary medicines, and same schedule and section, p. 477, makes duty on calcined magnesia twelve cents per pound. A certain firm put up calcined magnesia in bottles with their name blown thereon, wrapped in circular which claimed peculiar excellence for their preparation, cautioning

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purchasers against imitations thereof, and calling attention to "trade-mark" stamped thereon. The process used by firm in calcining magnesia was not a secret one, but the preparation differed from ordinary calcined magnesia in that grit was got rid of, and it had peculiar market value by reason of nicety with which it was prepared. *Held*, that it was subject to tax as a proprietary medicine. *Ferguson v. Arthur*, 406.

UNITED STATES COURTS. See BANKRUPTCY, 6. CONSTITUTIONAL LAW, 42-44, 46. ERRORS AND APPEALS, 2, 3, 7, 9.

1. Party who has moved from one state into another cannot sue in federal court as non-resident, after showing by his acts and declarations before litigation commenced, an intention of becoming citizen in new place of abode. *Winn v. Gilmer*, 706, and note.

2. Exclusive jurisdiction conferred on United States District Courts by 9th sect. of the Act of Sept. 24th 1789, of all suits for penalties and forfeitures under the customs laws, is not taken away by grant of jurisdiction to Circuit Court in 1st sect. of Act of March 3d 1875. *United States v. Mooney*, 215.

3. In action of trespass for seizing personal property *colore officii* with circumstances of aggravation and averment of special damage brought in Circuit Court United States, under Act 3d March 1875, it is error for court to dismiss suit on the ground that it did not "really and substantially" involve a controversy within its jurisdiction; where the conclusion is based on the opinion that a verdict for \$500 damages would be set aside as excessive. *Berry v. Edmunds*, 288.

4. The action being for tort it was for the jury to determine the damages, and in view of the enormity of the offence they might have been made punitive; such a verdict should not be set aside unless the jury have committed some gross error or acted under some improper influence or totally mistaken rules by which damages are regulated. *Id.*

5. Where it does not appear as matter of law from the nature of case as stated in pleadings that there could not legally be a judgment recovered for amount necessary to give jurisdiction, the court, in order to dismiss suit for want of jurisdiction must find as a matter of fact upon evidence legally sufficient that amount of damages stated in the declaration was colorable, and was so laid for the purpose of creating a case. *Id.*

6. The discretion given by sect. 5, Act March 3d 1875, is judicial, proceeding upon ascertained facts, according to rules of law, and subject to review for apparent errors. *Id.*

USURY. See CONFLICT OF LAWS, 3.

1. Agent for loaning money may take reasonable commission from borrower, even with knowledge of lender, without transaction being thereby made usurious, though full lawful interest is reserved to lender. *Landis v. Saxton*, 616.

2. Contract by executor for bonus from borrower of money of trust estate is illegal and will not be enforced. *Id.*

3. By terms of building association mortgage, weekly payments on loan were required, which amounted to more than legal rate of interest. The mortgage indicated that such payments were for interest, expenses, &c. *Held*, usurious. *Waverly Asso. v. Buck*, 480.

4. Where maker of promissory note payable *in futuro*, with ten per cent. interest from date, omitting the words "until paid," pays that rate of interest after maturity of note, he cannot recover excess paid over six per cent. accruing after maturity. *Rector v. Collins*, 522.

5. It is not usury to add interest on several notes to principal, and then add to sum interest on it at ten per cent. per annum for one year, and then take new note for this last sum payable one year after date, with interest at ten per cent. per annum after maturity, in payment of old notes. *Grider v. Driver*, 552.

6. It is not usury for one to sell property on credit for higher price than for cash, with legal interest added; but if sale be made on cash estimate, and time given to pay same, and an amount is assumed to be paid greater than cash price, with legal interest, that is usurious. *Id.*

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7. Plaintiff will not be relieved in equity from usurious contract except on condition he pays principal and legal interest. *Gridler v. Driven*, 552.

8. Although it will be presumed in many cases, in absence of contrary showing, that laws of other states are same as our own, the presumption will not be indulged where our laws impose penalty or forfeiture, as in case of usury. *Id.*

9. Parol evidence is admissible to show a different consideration from that expressed in notes and conveyances. Such evidence is also admissible where usury is pleaded regardless of the form the transaction may have in the writings executed by the parties. *Kidder v. Vandersloot*, 152.

10. A. borrowed \$2500 on several years' time, and to secure its payment with interest, conveyed to the lender eighty acres of land, taking back a written contract for a reconveyance on payment of principal and ten per cent. interest annually, that rate being the highest then allowed by law, with \$20 yearly for taxes, making \$270 annually, and the proof showed that only \$250 was in fact paid as interest, and that, on payment of that sum, and producing tax receipt of such year he was credited with \$270. It was held, the contract was not usurious, and that the \$20 was but a guaranty for the payment of the taxes, which were chargeable against the mortgagee by reason of the legal title being in him. *Id.*

VENDOR AND VENDEE. See **CONTRACT**, 9. **COVENANT**, 2. **EQUITY**, 17. **FIXTURES**, 1. **FRAUDS**, **STATUTE OF**, 3. **LIEN**, 1, 2.

1. Where land is sold at fixed price per acre, and vendor fraudulently misrepresents the number of acres, vendee is entitled to abatement in price, although deed contains the phrase "more or less." *Tyler v. Anderson*, 570, and *note*.

2. If vendee of land remaining in possession, buys in outstanding incumbrance, he will not be permitted to set up adverse title under it. Purchase enures to benefit of vendor's title and vendee can only abate purchase-money, or in case he has paid this, recover amount expended by action on covenant broken or other proper remedy. *Bush v. Adams*, 552.

3. The principle governing courts of equity in enforcement of liens is implied agreement held to exist between vendor and vendee that former shall hold lien on lands sold for purchase-money, on ground that person who has estate ought not, in conscience, as between them, to keep it and not pay purchase-money; but if vendor takes collateral and independent security for purchase-money, he thereby waives all right to vendor's lien. *Beal v. Harrington*, 679.

4. A person purchased land, for which he agreed to give certain goods and convey town lots valued at \$1000, and had land so purchased conveyed to his sons in trust for himself, they paying nothing, and delivered the goods, but was unable to convey the lots for want of title thereto. The sons afterwards, at father's request, conveyed land to third person, who paid nothing therefor, but held title for the father. *Held*, that vendor had lien on lands conveyed by him to extent of \$1000—the unpaid purchase-money—which he could enforce against the sons and their voluntary grantee. *Id.*

5. Where purchaser of land entered into possession under agreement that purchase-money was not to be paid unless vendor should, within three years, make him a warranty deed conveying a perfect title, and in case of failure so to do, purchaser was to remain in possession for three years and pay reasonable rent for time he could hold peaceable possession; and before expiration of three years he acquired title from other parties, it was *held*, that there was nothing in relation of parties, under original contract or otherwise, that prevented purchaser from yielding to superior title, purchasing same to secure his peace and asserting it against his vendor. *Green v. Deitrich*, 413.

VERDICT. See **CRIMINAL LAW**, 13, 14.

WAGER. See **PUBLIC POLICY**, 1.

WAGES. See **EXEMPTION**, 9, 10.

WAIVER. See **ERRORS AND APPEALS**, 8. **EVIDENCE**, 1. **EXEMPTION**, 9, 10. **VENDOR AND VENDEE**, 3.

WARRANTY. See **AGENT**, 5, 6. **BAILMENT**, 1. **CONTRACT**, 21. **INSURANCE**, 14. **SALE**, 3, 7.

WATERS AND WATER-COURSES. See **DAMAGES**, 8. **DEED**, 10, 11. **EQUITY**, 13.

1. If owner of land on running stream so construct embankments to protect his land from current, that man of ordinary prudence would reasonably anticipate damage to owners of other lands in case of flood, he is liable for such damage. *Crawford v. Rambo*, 480.

2. Where all that can be inferred from what complainant states in his bill, is, that in case of heavy freshet, stream will, if embankment remains, overflow portion of his land and destroy the crops, if any thereon, case for injunction to restrain defendant from maintaining embankment, is not made out; the few acres liable to such occasional overflow being part of a farm of more than 100 acres. *Blaine v. Brady*, 480.

3. Where one deliberately and without compulsion, selects a particular portion of a floatable stream for storage of logs, and thereby prevents another from entering such common highway with drive of logs from tributary stream, he is liable for damage occasioned thereby. *McPheters v. Log Driving Co.*, 799.

4. Wages and board of men while waiting for a reasonable time would be an element of damages; so, too, would expense moving one crew out and another in, as well as increased cost of drive next season and interest on contract price for making drive during time payment was delayed, because of inability to complete drive owing to such obstruction. *Id.*

5. Loss of supplies left in woods for use when completing drive and destroyed by wild beasts, too remote to constitute element of damage. *Id.*

6. An easement originating from water supplied by spring not situated on land belonging to grantor of plaintiff's premises, will not pass as appurtenant to estate conveyed, unless it has become attached to same; but if it has become appurtenant to it either by express or implied grant or by prescription, a conveyance of that estate will carry such easement, whether mentioned in deed or not, although it may not be necessary to employment of estate by grantee. *Douty v. Dunning*, 799.

7. There may be such adverse and exclusive use of water flowing through an aqueduct for each period of time as may be considered presumptive evidence of a grant. *Id.*

8. Right to draw water from spring and have pipes laid in soil of another, and to enter thereon, repair and renew same, constitutes an interest in realty, assignable, descendible and divisible; and easements growing out of it may be acquired by grant or prescription and thus become objects of title in others. *Id.*

9. Easement will become extinguished by unity of title and possession of dominant and servient estates in same person by same right; but the ownership of two estates must be co-extensive, equal in validity, quality, and all other circumstances of right. If one is held in severalty and the other only as to a fractional part thereof by the same person, there will be no extinguishment of the easement. *Id.*

WILL. See **CONFLICT OF LAWS**, 8. **CONTRACT**, 13. **EXECUTORS AND ADMINISTRATORS**, 5. **MANDAMUS**, 7. **POWER**, 1.

1. Parol evidence admitted to show that by "lot numbered six, in square four hundred and three," which testator did not own, was intended lot No. 3, in square 406, which testator did own. *Patch v. White*, 352.

2. When testator's intention appears that all after-acquired property should pass by will, conveyance of all the estate previously devised by trust deed with power of revocation which is subsequently exercised, does not revoke will. *Morey v. Sohler*, 480.

3. Real estate specifically devised is not charged with general pecuniary legacy where there is nothing to show such intention. *Davenport v. Sargent*, 480.

4. Legacies, unless otherwise controlled by the will, draw interest after one year from its probate, notwithstanding that executor is unable to gather in the assets and pay the legacy within the year. *Baptist Convention v. Ladd*, 679.

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5. where there is dispute between executor and legatee as to interest due on legacy on account of delay caused by litigation for protection of the estate, an acceptance by legatee of less than amount due is an accord and satisfaction, if payment is made on condition that it shall be in full for balance due and money is accepted without protest against such condition. *Baptist Conv. v. Ladd*, 679.

6. Devise of real and personal property generally, without stating the purpose to a corporation created and existing for educational purposes alone, must be regarded as a devise for educational purposes. *Academy v. Sullivan*, 680.

7. Such a corporation is not one for pecuniary profit, merely because fees are charged for tuition; a corporation for pecuniary profit is one organized "for the pecuniary profit of its stockholders or members." *Id.*

8. By one clause of will testator devised to his wife for and during the term of her natural life, certain real estate. The reversionary interest therein was not specifically devised. By general residuary clause, he devised to his wife all the rest, residue and remainder of his estate. *Held*, that by the terms of the will and the intention of testator as gathered from the whole instrument, the wife took an estate in fee in the real estate thus devised. *Davis v. Callahan*, 680.

9. When possibility of failure of sufficient assets to meet legacies named by testator in his will, has not been anticipated and specifically provided for by him, the presumption of intended equality prevails between general legatees, as well as equality in respect to share to be borne in all deficiencies of assets. *Emery v. Batchelder*, 680.

10. In administration of testamentary assets where there is a deficiency of such assets after payment of debts, expenses and specific legacies, the loss is to be borne *pro rata* by those pecuniary legacies which are in their nature general. *Id.*

11. Annuities stand on same footing as legacies; where the estate is deficient both must abate proportionally. *Id.*

12. Bequest of sum of money to one after decease of legatee, to whom income of money is given during life, vests at once on testator's death. *Crosby v. Crosby*, 800.

13. Where testator devises property to his sons, and also property belonging to them to another, they must either relinquish their claim to their own property so devised, or to the provision made in their favor. *Ditch v. Sennot*, 800.

14. Doctrine of election does not apply where testator has but part interest in an estate which he devises; but even in such case, if it is apparent, from terms of will, that testator intended to devise whole estate, including interest of third person, then doctrine will apply to such third person if a devisee. *Id.*

15. A., by will, gave \$10,000 to B., in trust for C., for life, with remainder to children of C., if she had any, if not then to D. C. had no children. D. died in lifetime of C., leaving one child. *Held*, remainder became vested in D. immediately on death of testator, subject to be divested by birth of child to C., and that on death of C., without children, fund passed to heir-at-law of D. *Vandewalker v. Rollins*, 414.

16. The quality of property for purposes of transmission by will or inheritance is not changed from character in which testator or intestate left it, unless by some clear act he has impressed upon it definite character as money or land. When, for security of fund, money is converted into land by judicial decree, the land is substituted for fund and goes to same person who would have taken it had it remained personal estate. *Id.*

17. On question of undue influence, proponent may show that nominal legacies to heirs other than children, were inserted at suggestion of person who wrote will, because he erroneously supposed it necessary to validity of same. As to testamentary capacity, the will itself is evidence. *Whitman v. Morey*, 414.

18. Where portions of deposition are read by one party for purpose of contradicting witness who gave it, other party may read, from same deposition, so much as pertains to same subject, and tends to explain, qualify or limit what is so read. *Id.*

19. Practice of requiring executor, on issues of insanity and undue influence, to call all subscribing witnesses to will, if alive, sane and within jurisdiction, should not be departed from without good cause. *Id.*

20. Whether party shall be allowed to put leading questions to his own wit-

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nesses is within discretion of presiding judge and is not matter of exception. *Whitman v. Morey*, 414.

21. Rule forbidding party to discredit his witness does not extend to case of attesting witness when, by legal intendment, he has no choice. *Id.*

22. On issues of insanity and undue influence declarations of testator tending to show state of his feelings towards relatives, to whom he gave only nominal sum, may be received. *Id.*

23. Where evidence of testator's capacity to make will was conflicting, court instructed jury that if they believed that at time will was executed testator was so diseased mentally as not to be of sound mind then their verdict should be for plaintiff. *Held*, that instruction was erroneous, as it stated rule too broadly. *Freeman v. Early*, 799.

24. A person may be so diseased mentally, as not to be of sound mind, and yet possess a disposing mind, which is mental capacity to know and understand what disposition he may wish to make of his property, and upon whom he will bestow his bounty. *Id.*

25. A person capable of transacting ordinary business is capable of making a valid will. To incapacitate person from making a will, derangement or imbecility must be such as to render him incapable of understanding the effects and consequences of his acts. *Id.*

26. Realty was devised to trustee in fee to pay over income to certain *cestuis*, no time being limited. Provision was made as to one of *cestuis* that in case of his insolvency or of attachment of his equitable estate, his right to income should terminate, and his share be paid to A., B. and C., their heirs and assigns, also that trustee might, in certain contingencies, pay over to *cestui* his whole interest "in fee simple for his own use," free from all trusts. *Held*, that *cestui que trustent* took each an equitable estate in fee simple. *Greene v. Wilbur*, 616.

27. Revocation of will is not affected by death of legatees or devisees named in it; nor by marriage of testator, there being no issue of marriage; nor by alienation of larger part of his estate, which was specifically disposed of by will; nor by acquisition of other estate to amount much greater than he possessed at time will was made; nor by concurrence of all above circumstances. *Hoitt v. Hoitt*, 414.

28. Declarations of testator that he understood a will made by him was revoked, not admissible on question of revocation. *Id.*

29. Declarations of testator as to his intention in disposition of his property, not competent evidence from which to ascertain his intention as expressed in the will. *Id.*

30. A. devised real and personal property to trustees to hold in trust for P., with direction to apply, from time to time, such portion, or if necessary, the whole of the income to the support of P., and upon the latter's arrival at age of eighteen, or in case of her marriage before that age, then to pay over to her the whole estate or such portion thereof as in their judgment should seem most for her benefit, leaving this matter to the discretion of the trustees. P. arrived at the age of eighteen, but trustees in exercise of their discretion withheld the payment of the principal. Upon P.'s death, *held*, that P. took a vested estate which passed to her devisees. *Weatherhead v. Stoddard*, 531.

31. No estate will be held contingent unless very decided terms of contingencies are used in the will, or it is necessary in order to carry out testator's intent as therein expressed. *Id.*

32. TESTAMENTARY PROVISIONS AS AFFECTED BY THE RULES OF PRIVATE INTERNATIONAL LAW, 153.

WITNESS. See EVIDENCE, 6-9, 14, 17, 20. HABEAS CORPUS, 2.

On trial of party for larceny, after laying proper foundation, a grand juror was called to contradict one of defendant's witnesses, by testifying to his statements on oath before grand jury, which he had denied. It was objected that a grand juror could not be called as a witness to disclose what occurred before grand jury, but court held evidence proper. *Bressler v. State*, 800.